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SENATE

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TAXATION PROTOCOL AMENDING CONVENTION
WITH INDONESIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL, SIGNED AT JAKARTA JULY 24, 1996, AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, WITH A RELATED PROTOCOL AND EXCHANGE OF NOTES SIGNED AT JAKARTA ON JULY 11, 1988



SEPTEMBER 4, 1996.—Protocol was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate.

U.S. GOVERNMENT PRINTING OFFICE

29-112

WASHINGTON : 1996

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 4, 1996.*

To the Senate of the United States:

I transmit herewith for Senate advice and consent to ratification a Protocol, signed at Jakarta July 24, 1996, Amending the Convention Between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with a Related Protocol and Exchange of Notes Signed at Jakarta on the 11th Day of July, 1988. Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

This Protocol reduces the rates of tax to be applied to various types of income earned by U.S. firms operating in Indonesia.

I recommend that the Senate give early and favorable consideration to this Protocol and give its advice and consent to ratification.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 30, 1996.

The PRESIDENT,
The White House.

I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, a Protocol, signed at Jakarta July 24, 1996 ("the Protocol"), Amending the Convention Between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with a Related Protocol and Exchange of Notes Signed at Jakarta on the 11th Day of July, 1988.

In many cases, the withholding rates in the existing Convention significantly exceed those found in Indonesia's other recent tax treaties as well as those in most U.S. tax treaties. The rates in the current Convention place U.S. businesses at a substantial disadvantage in Indonesia relative to competitors from a number of other countries. With the significant reduction in tax rates on income derived from direct investments, interest and royalties contained in the proposed Protocol, U.S. firms can better compete in Indonesia.

This Protocol reduces the withholding rates on direct-investment dividend, interest and royalty income, which are generally 15 percent in the existing Convention, to 10 percent. (As amended by the proposed Protocol, the Convention would require at least a 25-percent ownership interest to qualify for this reduction in the tax rate. The withholding rate on dividends paid on portfolio investments (those representing less than 25 percent of ownership) remains at 15 percent in the proposed Protocol.)

Interest arising in one of the two Contracting States shall be taxable only in the other State to the extent that such interest is derived by: (i) the Government of the other State, including political subdivisions and local authorities thereof; or (ii) the Central Bank of the other State; or (iii) a financial institution owned or controlled by the Government of the other State, including political subdivisions and local authorities thereof.

The proposed Protocol is subject to ratification. It will enter into force upon the exchange of instruments of ratification and will have effect with respect to taxes withheld by the source country for payments made or credited on or after the first day of the second month following entry into force.

This Protocol will remain in force indefinitely unless the underlying Convention is terminated by one of the Contracting States. Ei-

ther State may terminate the Convention by giving at least six months prior notice through diplomatic channels.

A technical memorandum explaining in detail the provisions of the Protocol will be prepared by the Department of the Treasury and will be submitted separately to the Senate Committee on Foreign Relations.

The Department of the Treasury and the Department of State cooperated in the negotiation of the Protocol. It has the full approval of both Departments.

Respectfully submitted,

STROBE TALBOTT.

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF INDONESIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, WITH A RELATED PROTOCOL AND EXCHANGE OF NOTES SIGNED AT JAKARTA ON THE 11TH DAY OF JULY, 1988

The Government of the United States of America and the Government of the Republic of Indonesia, desiring to conclude a protocol to amend the Convention between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with a related protocol and exchange of notes signed at Jakarta on the 11th day of July, 1988, have agreed as follows :

Article 1

1. Paragraph 2 of Article 11 of the Convention shall be deleted and replaced by the following :

"However, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax charged by the first-mentioned State may not exceed :

- (a) 10% of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 25% of the voting stock of the company paying the dividends;
- (b) 15% of the gross amount of the dividends in all other cases."

2. Paragraph 4 of Article 11 of the Convention shall be deleted and replaced by the following :

"Where a company which is a resident of a Contracting State has a permanent establishment in the other Contracting State, that other State may impose an additional tax in accordance with its law on the profits attributable to the permanent establishment (after deducting therefrom the company tax and other taxes on income imposed thereon in that other State) and on interest payments allocable to the permanent establishment, but the additional tax so charged shall not exceed 10%."

Article 2

Paragraph 2 and 3 of Article 12 of the Convention shall be deleted and replaced by the following:

- "(2) The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 10% of the gross amount of such interest.
- (3) Notwithstanding paragraphs 1 and 2, interest arising in one of the two States shall be taxable only in the other State to the extent that such interest is derived by :
- (i) The Government of the other State, including political subdivisions and local authorities thereof; or
 - (ii) the Central Bank of the other State; or
 - (iii) a financial institution owned or controlled by the Government of the other State, including political subdivisions and local authorities thereof."

Article 3

Paragraph 2 of Article 13 of the Convention shall be deleted and replaced by the following :

- "(2) The rate of tax imposed by a Contracting State on royalties derived from sources within that Contracting State and beneficially owned by a resident of the other Contracting State shall not exceed 10% of the gross amount of royalties described in paragraph 3. "

Article 4

This Protocol shall be an integral and inseparable part of the Convention between the Government of the United States of America and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, with a related protocol and exchange of notes signed at Jakarta on the 11th day of July, 1988.

Article 5

This Protocol shall be subject to ratification and instruments of ratification shall be exchanged as soon as possible. It shall enter into force on the date of exchange of the instruments of ratification. The provisions shall for the first time have effect for amounts paid or credited on or after the first day of the second month next following the date on which the Protocol enters into force.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

Done at Jakarta, in duplicate, in the English language, this 24th day of July, 1996.

For the Government of
the United States of America

Warren Christopher

For the Government of
the Republic of Indonesia

[Signature]