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SENATE

TREATY DOC.
104-11

EXCHANGE OF NOTES RELATING TO THE TAX
CONVENTION WITH UKRAINE

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

AN EXCHANGE OF NOTES DATED AT WASHINGTON MAY 26 AND JUNE 6, 1995, RELATING TO THE CONVENTION (SEE TREATY DOC. 103-30) 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, TOGETHER WITH A RELATED PROTOCOL, SIGNED AT WASHINGTON ON MARCH 4, 1994



JUNE 30, 1995.—Treaty 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

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WASHINGTON : 1995

LETTER OF TRANSMITTAL

THE WHITE HOUSE, *June 28, 1995.*

To the Senate of the United States:

I transmit herewith an exchange of notes dated at Washington May 26 and June 6, 1995, for Senate advice and consent to ratification in connection with the Senate's consideration of the 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, together with a related Protocol, signed at Washington on March 4, 1994 ("the Taxation Convention"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the exchange of notes.

This exchange of notes addresses the interaction between the Taxation Convention and other treaties that have tax provisions, including in particular the General Agreement on Trade in Services (GATS), annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1995.

I recommend that the Senate give favorable consideration to this exchange of notes and give its advice and consent to ratification in connection with the Taxation Convention.

WILLIAM J. CLINTON.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, June 10, 1995.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you an exchange of notes, dated at Washington May 26 and June 6, 1995, with a view to transmission of these notes to the Senate for advice and consent to ratification in connection with the Senate's consideration of the 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, together with a related Protocol, signed at Washington on March 4, 1994 (the "Taxation Convention"). This exchange of notes addresses the interaction between the Taxation Convention and other treaties and agreements that have provisions affecting taxes.

The United States is a party to the General Agreement on Trade in Services (GATS") annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. GATS entered into force on January 1, 1995. Although the United States is a party to GATS, the Government of Ukraine is not yet a party. The exchange of notes ensures first that, if Ukraine accedes to the GATS and GATS obligations become applicable between the United States and Ukraine, the dispute resolution mechanisms of the Taxation Convention would govern national treatment disputes regarding taxation measures. The exchange of notes further provides that the non-discrimination provisions of the Taxation Convention, rather than the national or most-favored-nation treatment obligations of any other agreement (except for the General Agreement on Tariffs and Trade, if it applies between the United States and Ukraine, and the Agreement on Trade Relations Between the United States and Ukraine, signed on May 6, 1992) will apply to taxation measures except those outside the scope of the Taxation Convention.

Provisions similar to those in this exchange of notes are included in the taxation conventions between the United States and Portugal, Sweden, and France, which have been transmitted to the Senate.

The Department of Treasury and the Department of State cooperated in the negotiation of the Convention and the most recent exchange of notes. The notes have the full approval of both Departments.

Respectfully submitted,

PETER TARNOFF.

DEPARTMENT OF STATE,
Washington, May 26, 1995.

His Excellency YURIY SHCHERBAK,
Ambassador of Ukraine.

EXCELLENCY: I have the honor to refer to the Convention between the Government of the United States of America and 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, together with a related Protocol, signed at Washington on March 4, 1994 ("Taxation Convention") and the General Agreement on Trade in Services ("GATS").

The Government of the United States is a Party to the GATS, annexed to the Agreement Establishing the World Trade Organization, done at Marrakesh April 15, 1994. The Government of Ukraine is not yet a party to the GATS. The United States and Ukraine have, however, considered the relationship between the Taxation Convention and the GATS in the event that the GATS applies between them, particularly with regard to the Consultation provision in Article XXII of the GATS and the Most-Favored-Nation and National Treatment provisions in Articles II and XVII of the GATS. In addition, the United States and Ukraine have considered the relationship between the Taxation Convention and other agreements that apply between them and that have provisions concerning national treatment or most-favored-nation treatment.

To address these issues, I have the honor to propose that:

(1) notwithstanding Article XXII and footnote II of the GATS, in the event that the GATS applies between the United States and Ukraine, a dispute concerning whether a measure is within the scope of the Taxation convention shall be considered only pursuant to Article 26 (Mutual Agreement Procedure) of the Taxation Convention by the competent authorities of the United States and Ukraine as defined in subparagraph 1(j) of Article 3 (General Definitions); and

(2) unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, national treatment or most-favored-nation obligations under any other agreement (including GATS in the event that it applies between the United States and Ukraine) shall not apply to a taxation measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the Agreement on Trade Relations between the United States and Ukraine, signed on May 6, 1992, and the General Agreement on Tariffs and Trade if it applies between the United States and Ukraine.

If this proposal is acceptable to the Government of Ukraine, I have the further honor to propose that this note, and your Govern-

ment's note in reply, shall constitute an agreement which shall enter into force on the date the Taxation Convention enters into force.

Accept, Excellency, the renewed assurances of my highest consideration.

For the Secretary of State:

ALAN LARSON.



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June 6, 1995

Excellency:

I have the honor to refer to your note of May 26, 1995, concerning the 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, together with a related Protocol, signed at Washington on March 4, 1994 ("Taxation Convention") and the General Agreement on Trade in Services ("GATS")

The proposal as contained in your aforementioned note reads as follows:

"(1) Notwithstanding article XXII and footnote 11 of the GATS, in the event that the GATS applies between the United States and Ukraine, a dispute concerning whether a measure is within the scope of the Taxation Convention shall be considered only pursuant to Article 26 (Mutual Agreement Procedure) of the Taxation Convention by the competent authorities of the United States and Ukraine as defined in Subparagraph 1(J) of Article 3 (General Definitions); and

**His Excellency
Warren CHRISTOPHER,
Secretary of State**

(2) Unless the competent authorities determine that a taxation measure is not within the scope of the Taxation Convention, national treatment or most-favored-nation obligations under any other Agreement (including GATS in the event that it applies between the United States and Ukraine) shall not apply to a taxation measure, except for such national treatment or most-favored-nation obligations as may apply to trade in goods under the Agreement on Trade Relations between the United States and Ukraine, signed on May 6, 1992, and the General Agreement on Tariffs and Trade if it applies between the United States and Ukraine".

I am pleased to confirm that this proposal is acceptable to the Government of Ukraine and that your note and this note in reply shall constitute an Agreement which shall enter into force on the date the Taxation Convention enters into force.

Accept, Excellency, the renewed assurances of my highest consideration.

Raleva



[Signature] for the Ambassador of Ukraine