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PROTOCOL AMENDING TAX CONVENTION WITH FINLAND

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT HELSINKI MAY 31, 2006 (THE "PROTOCOL")

SEPTEMBER 29, 2006.—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

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U.S. GOVERNMENT PRINTING OFFICE

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *September 29, 2006.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, a Protocol Amending the Convention Between the Government of the United States of America and the Government of the Republic of Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed at Helsinki May 31, 2006 (the "Protocol"). Also transmitted for the information of the Senate is the report of the Department of State with respect to the Protocol.

The Protocol eliminates the withholding tax on certain cross-border dividend payments. Like a number of recent U.S. tax agreements, the proposed Protocol provides for the elimination of the withholding tax on dividends arising from certain direct investments and cross-border dividend payments to pension funds. The Protocol also eliminates the withholding tax on cross-border royalty payments. In addition, the Protocol modernizes the Convention to bring it into closer conformity with current U.S. tax-treaty policy, including strengthening the treaty's provisions preventing so-called treaty shopping.

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

GEORGE W. BUSH.

LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, August 1, 2006.

The PRESIDENT,
The White House.

THE PRESIDENT: 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 Amending the Convention Between the Government of the United States of America and the Government of the Republic of Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital signed at Helsinki May 31, 2006 (the "Protocol").

The Protocol eliminates the withholding tax on certain cross-border dividend payments. Like a number of recent U.S. tax agreements, the proposed Protocol provides for the elimination of the withholding tax on dividends arising from certain direct investments and cross-border dividend payments to pension funds. The Protocol also eliminates the withholding tax on cross-border royalty payments. In addition, the Protocol also modernizes the Convention to bring it into closer conformity with current U.S. tax-treaty policy, including strengthening the treaty's provisions preventing so-called treaty shopping.

The Protocol was concluded in recognition of the importance of the United States' economic relations with Finland. 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.

CONDOLEEZZA RICE.

Enclosures.

KEY PROVISIONS OF THE U.S.-FINLAND INCOME TAX PROTOCOL

The Protocol to the income tax Convention with Finland was negotiated to bring the current Convention, concluded in 1989, into closer conformity with current U.S. tax treaty policy. There are, as with all bilateral tax conventions, some variations from these norms. In the Protocol, these differences reflect particular aspects of Finnish law and treaty policy, the interaction of U.S. and Finnish law, and U.S.-Finnish economic relations.

The most important aspect of the Protocol relates to the taxation of cross-border dividend payments. Under the Protocol, most dividends paid by a subsidiary in one country to its parent in the other country will be exempt from withholding tax in the subsidiary's home country, rather than being subject to the current treaty's

maximum withholding tax rate for direct dividends of five percent. The proposed Protocol also provides for a withholding rate of zero on cross-border dividend payments to pension funds. Eliminating withholding taxes on cross-border direct dividends and cross-border dividend payments to pension funds is consistent with an overall view that investment income should be taxed by the country of residence, not the country of source.

The Protocol also eliminates the withholding tax on cross-border royalty payments. The existing treaty's maximum withholding tax rate for cross-border royalty payments is five percent.

In addition, the Protocol strengthens the treaty's provisions preventing so-called treaty shopping, which is the inappropriate use of a tax treaty by third-country residents.

The Protocol also updates the current treaty to reflect U.S. and Finnish legislative changes since 1989. For example, the Protocol updates the "saving clause" to provide that former citizens or long-term residents of the United States may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of the United States.

The proposed Protocol will enter into force upon the exchange of instruments of ratification. It will generally have effect, with respect to taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date upon which the Protocol enters into force and, with respect to other taxes, for taxable years beginning on or after the first day of January next following the date upon which the Protocol enters into force. However, the proposed Protocol will have effect with respect to taxes withheld at source on direct dividends and dividends paid to pension funds for income derived on or after the first day of January 2007, provided that this Protocol enters into force before December 31, 2007.

PROTOCOL
AMENDING THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE REPUBLIC OF FINLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The Government of the United States of America and the Government of the Republic of Finland, desiring to amend the Convention Between the Government of the United States of America and the Government of the Republic of Finland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, signed at Helsinki on September 21, 1989 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Article 1 (Personal Scope) of the Convention is omitted and the following Article is substituted:

"ARTICLE 1
Personal Scope

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded:

a) by the laws of either Contracting State; or

b) by any other agreement between the Contracting States.

3. a) Notwithstanding the provisions of subparagraph b) of paragraph 2 of this Article:

(i) for purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that any question arising as to the interpretation or application of this Convention and, in particular, whether a taxation measure is within the scope of this Convention, shall be determined exclusively in accordance with the provisions of Article 25 (Mutual Agreement Procedure) of this Convention; and

(ii) the provisions of Article XVII of the General Agreement on Trade in Services shall not apply to a taxation measure unless the competent authorities agree that the measure is not within the scope of Article 24 (Non-discrimination) of this Convention.

b) For the purposes of this paragraph, a "measure" is a law, regulation, rule, procedure, decision, administrative action, or any similar provision or action.

4. Except to the extent provided in paragraph 5, this Convention shall not affect the taxation by a Contracting State of its residents (as determined under Article 4

(Residence)) and its citizens. Notwithstanding the other provisions of this Convention, a former citizen or long-term resident of a Contracting State may, for the period of ten years following the loss of such status, be taxed in accordance with the laws of that Contracting State.

5. The provisions of paragraph 4 shall not affect:

a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under subparagraph b) of paragraph 1 and paragraph 4 of Article 18 (Pensions, Annuities, Alimony, and Child Support), and under Articles 23 (Elimination of Double Taxation), 24 (Non-discrimination), and 25 (Mutual Agreement Procedure); and

b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students and Trainees), and 27 (Members of Diplomatic Missions and Consular Posts), upon individuals who are neither citizens of, nor have been admitted for permanent residence in, that State.

6. An item of income derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income of a resident."

ARTICLE II

Article 4 (Residence) of the Convention is amended by:

a) omitting paragraph 1 and substituting the following:

"1. a) For the purposes of this Convention, 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, place of incorporation, or any other criterion of a similar nature, and also includes that State and any political subdivision, statutory body or local authority thereof. This term, however, does not include any person who is liable to tax in that

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State in respect only of income from sources in that State or of profits attributable to a permanent establishment in that State or capital situated therein.

b) A United States citizen or an alien lawfully admitted for permanent residence (a "green card" holder) in the United States is a resident of the United States, but only if such person has a substantial presence, permanent home, or habitual abode in the United States.

c) The term "resident of a Contracting State" includes a legal person organized under the laws of a Contracting State and that is generally exempt from tax in that State and is established and maintained in that State either:

(i) exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes; or

(ii) to provide pensions or other retirement benefits pursuant to a plan."; and

b) omitting paragraph 3 and substituting the following:

"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, the competent authorities of the Contracting States shall by mutual agreement endeavor to determine the mode of application of this Convention to that person. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Convention."

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ARTICLE III

1. Article 10 (Dividends) of the Convention shall be omitted and the following shall be substituted:

"ARTICLE 10
Dividends

1. Dividends paid by a company that 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, 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:

a) 5 percent of the gross amount of the dividends if the beneficial owner is a company that owns directly at least 10 percent of the voting stock of the company paying the dividends;

b) 15 percent of the gross amount 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. Notwithstanding the provisions of paragraph 2, such dividends shall not be taxed in the Contracting State of which the company paying the dividends is a resident if the beneficial owner is:

a) a company that is a resident of the other Contracting State that has owned, directly or indirectly through one or more residents of either Contracting State, shares representing 80 percent or more of the voting power in the company paying the dividends for a 12-month period ending on the date on which entitlement to the dividends is determined and:

(i) satisfies the conditions of clause (i) or (ii) of subparagraph c) of paragraph 2 of Article 16 (Limitation on Benefits);

(ii) satisfies the conditions of clauses (i) and (ii) of subparagraph f) of paragraph 2 of Article 16, provided that the

company satisfies the conditions described in paragraph 4 of that Article with respect to the dividends;

(iii) is entitled to benefits with respect to the dividends under paragraph 3 of Article 16; or

(iv) has received a determination pursuant to paragraph 6 of Article 16 with respect to this paragraph; or

b) a pension fund (as defined in subparagraph j) of paragraph 7 of Article 16) that is a resident of the other Contracting State, provided that such dividends are not derived from the carrying on of a business by the pension fund or through an associated enterprise.

4. a) Subparagraph a) of paragraph 2 and subparagraph a) of paragraph 3 shall not apply in the case of dividends paid by a U.S. Regulated Investment Company (RIC) or a Real Estate Investment Trust (REIT). In the case of dividends paid by a RIC, subparagraph b) of paragraph 2 and subparagraph b) of paragraph 3 shall apply. In the case of dividends paid by a REIT, subparagraph b) of paragraph 2 and subparagraph b) of paragraph 3 shall apply only if:

(i) the beneficial owner of the dividends is an individual or pension fund, in either case holding an interest of not more than 10 percent in the REIT;

(ii) the dividends are paid with respect to a class of stock that is publicly traded and the beneficial owner of the dividends is a person holding an interest of not more than 5 percent of any class of the REIT's stock; or

(iii) the beneficial owner of the dividends is a person holding an interest of not more than 10 percent in the REIT and the REIT is diversified.

b) For purposes of this paragraph, a REIT shall be "diversified" if the value of no single interest in real property exceeds 10 percent of its total interests in real property. For the purposes of this rule, foreclosure property

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shall not be considered an interest in real property. Where a REIT holds an interest in a partnership, it shall be treated as owning directly a proportion of the partnership's interests in real property corresponding to its interest in the partnership.

5. The term "dividends" as used in this Article means:

a) income from shares or other rights, not being debt-claims, participating in profits;

b) income from other corporate rights that 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; and

c) income from arrangements, including debt obligations, carrying the right to participate in profits, to the extent so characterized under the law of the Contracting State in which the income arises.

6. The provisions of paragraphs 2 and 3 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, or performs in that other State independent personal services from a fixed base situated therein, and the dividends are attributable to such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

7. A Contracting State may not impose any tax on dividends paid by a company which is not a resident of that State, except insofar as:

a) the dividends are paid to a resident of that State; or

b) the dividends are attributable to a permanent establishment or a fixed base situated in that State.

8. A company that is a resident of a Contracting State and that has a permanent establishment in the other Contracting State, or that is subject to tax in that other

Contracting State on items of income that may be taxed in that other State under Article 6 (Income from Immovable (Real) Property) or under paragraph 1 of Article 13 (Gains), may be subject in that other Contracting State to a tax in addition to the tax allowable under the other provisions of this Convention. Such tax, however, may be imposed only on:

a) in the case of the United States,

(i) the portion of the business profits of the company attributable to the permanent establishment, and

(ii) the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 or Article 13,

that represents the "dividend equivalent amount" as that term is defined under the laws of the United States as it may be amended from time to time without changing the general principle thereof; and

b) in the case of Finland,

(i) the portion of the business profits of the company attributable to the permanent establishment, and

(ii) the portion of the income referred to in the preceding sentence that is subject to tax under Article 6 or paragraph 1 of Article 13,

that in both cases represent an amount, as defined under the laws of Finland, that if the operation was carried on by a subsidiary incorporated in Finland would be distributed as a dividend.

9. The tax referred to in subparagraphs a) and b) of paragraph 8 shall not be imposed at a rate exceeding the rate specified in subparagraph a) of paragraph 2. In any case, it shall not be imposed on a company that:

a) satisfies the conditions of clause (i) or (ii) of subparagraph c) of paragraph 2 of Article 16 (Limitation on Benefits);

b) satisfies the conditions of clauses (i) and (ii) of subparagraph f) of paragraph 2 of Article 16, provided that the company satisfies the

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conditions described in paragraph 4 of that Article with respect to an item of income, profit or gain described in paragraph 8 of this Article;

c) is entitled under paragraph 3 of Article 16 to benefits with respect to an item of income, profit or gain described in paragraph 8 of this Article; or

d) has received a determination pursuant to paragraph 6 of Article 16 with respect to this paragraph."

2. Paragraph 5 of Article 24 (Non-discrimination) shall be omitted and the following paragraph shall be substituted:

"5. Nothing in this Article shall be construed as preventing either Contracting State from imposing the tax described in paragraph 8 of Article 10 (Dividends)."

ARTICLE IV

The following new paragraph shall be added to Article 11 (Interest) of the Convention:

"6. Notwithstanding the provisions of paragraph 1:

a) interest paid by a resident of a Contracting State and that is determined with reference to receipts, sales, income, profits or other cash flow of the debtor or a related person, to any change in the value of any property of the debtor or a related person or to any dividend, partnership distribution or similar payment made by the debtor to a related person, and paid to a resident of the other Contracting State also may be taxed in the Contracting State in which it arises, and according to the laws of that State, but if the beneficial owner is a resident of the other Contracting State, the gross amount of the interest may be taxed at a rate not exceeding the rate prescribed in subparagraph b) of paragraph 2 of Article 10 (Dividends); and

b) interest that is an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit may be taxed by each State in accordance with its domestic law."

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ARTICLE V

Paragraph 2 of Article 12 (Royalties) shall be omitted and paragraphs 3, 4, 5, and 6 shall be renumbered accordingly.

ARTICLE VI

Article 16 (Limitation on Benefits) of the Convention shall be omitted and the following Article substituted:

"ARTICLE 16
Limitation on Benefits

1. A resident of a Contracting State shall be entitled to benefits otherwise accorded to residents of a Contracting State by this Convention only to the extent provided in this Article.

2. A resident of a Contracting State shall be entitled to all the benefits of this Convention if the resident is:

a) an individual;

b) a Contracting State or any political subdivision, statutory body or local authority thereof;

c) a company, if:

(i) its principal class of shares (and any disproportionate class of shares) is regularly traded on one or more recognized stock exchanges, and either

A) its principal class of shares is primarily traded on a recognized stock exchange located in the Contracting State of which the company is a resident (or, in the case of a company resident in Finland, on a recognized stock exchange located within the European Union or in any other European Economic Area state or, in the case of a company resident in the United States, on a recognized

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stock exchange located in another state that is a party to the North American Free Trade Agreement); or

B) the company's primary place of management and control is in the Contracting State of which it is a resident; or

(ii) at least 50 percent of the aggregate voting power and value (and at least 50 percent of any disproportionate class of shares) of the shares in the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this subparagraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;

d) a person described in clause (i) of subparagraph c) of paragraph 1 of Article 4 (Residence) of this Convention,

e) a pension fund, provided that more than 50 percent of the person's beneficiaries, members or participants are individuals resident in either Contracting State; or

f) a person other than an individual, if:

(i) on at least half the days of the taxable year at least 50 percent of each class of shares or other beneficial interests in the person is owned, directly or indirectly, by residents of the Contracting State of which that person is a resident that are entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraphs d) or e) of this paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of that Contracting State; and

(ii) less than 50 percent of the person's gross income for the taxable year, as determined in the person's State of residence, is

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paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State entitled to the benefits of this Convention under subparagraph a), subparagraph b), clause (i) of subparagraph c), or subparagraphs d) or e) of this paragraph in the form of payments that are deductible for purposes of the taxes covered by this Convention in the person's State of residence (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor).

3. A company that is a resident of a Contracting State shall also be entitled to the benefits of the Convention if:

a) at least 95 percent of the aggregate voting power and value of its shares (and at least 50 percent of any disproportionate class of shares) is owned, directly or indirectly, by seven or fewer persons that are equivalent beneficiaries; and

b) less than 50 percent of the company's gross income, as determined in the company's State of residence, for the taxable year is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank that is not related to the payor), that are deductible for the purposes of the taxes covered by this Convention in the company's State of residence.

4. a) A resident of a Contracting State will be entitled to benefits of the Convention with respect to an item of income derived from the other State, regardless of whether the resident is entitled to benefits under paragraph 2 or 3 of this Article, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or

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managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business.

b) If a resident of a Contracting State derives an item of income from a trade or business activity in the other Contracting State, or derives an item of income arising in the other Contracting State from an associated enterprise, subparagraph a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State. Whether a trade or business activity is substantial for purposes of this paragraph will be determined based on all the facts and circumstances.

c) In determining whether a person is "engaged in the active conduct of a trade or business" in a Contracting State under subparagraph a) of this paragraph, activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 percent of the beneficial interest in the other (or, in the case of a company, at least 50 percent of the aggregate vote and at least 50 percent of the aggregate value of the shares in the company or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 percent of the beneficial interest (or, in the case of a company, at least 50 percent of the aggregate vote and at least 50 percent of the aggregate value of the shares in the company or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons.

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5. Notwithstanding the preceding provisions of this Article, where an enterprise of Finland derives insurance premiums, interest or royalties from the United States, and, pursuant to a tax convention between Finland and a third state, the income consisting of such premiums, interest or royalties is exempt from taxation in Finland because it is attributable to a permanent establishment which that enterprise has in that third state, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to such income if the tax that is actually paid with respect to such income in the third state is less than 60 percent of the tax that would have been payable in Finland if the income were earned in Finland by the enterprise and were not attributable to the permanent establishment in the third state. Any interest or royalties to which the provisions of this paragraph apply may be taxed in the United States at a rate that shall not exceed 15 percent of the gross amount thereof. Any insurance premiums to which the provisions of this paragraph apply will be subject to tax under the provisions of the domestic law of the United States, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

a) in the case of interest, the income derived from the United States is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third state (other than the business of making, managing or simply holding investments for the person's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer); or

b) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself.

6. A resident of a Contracting State that is not entitled to benefits pursuant to the preceding paragraphs of this Article shall, nevertheless, be granted benefits of the Convention if the competent authority of the other Contracting State determines that the establishment, acquisition or maintenance of such person and the conduct of its

operations did not have as one of its principal purposes the obtaining of benefits under the Convention. The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before denying the benefits of the Convention under this paragraph.

7. For the purposes of this Article,

a) the term "principal class of shares" means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the "principal class of shares" is that class or those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;

b) the term "disproportionate class of shares" means any class of shares of a company resident in one of the States that entitles the shareholder to disproportionately higher participation, through dividends, redemption payments or otherwise, in the earnings generated in the other State by particular assets or activities of the company;

c) the term "shares" shall include depository receipts thereof;

d) the term "recognized stock exchange" means:

(i) 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;

(ii) the Helsinki Stock Exchange;

(iii) the Irish Stock Exchange and the stock exchanges of Amsterdam, Brussels, Copenhagen, Frankfurt, London, Oslo, Paris, Reykjavik, Riga, Stockholm, Tallinn, Vilnius, Vienna, and Zurich; and (iv) any other stock exchanges agreed upon by the competent authorities of the Contracting States.

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e) a class of shares is considered to be regularly traded on one or more recognized stock exchanges in a taxable year if the aggregate number of shares of that class traded on such stock exchange or exchanges during the preceding taxable year is at least 6 per cent of the average number of shares outstanding in that class during that preceding taxable year;

f) a company's primary place of management and control will be in the State of which it is a resident only if executive officers and senior management employees exercise day-to-day responsibility for more of the strategic, financial and operational policy decision making for the company (including its direct and indirect subsidiaries) in that State than in any other state, and the staffs conduct more of the day-to-day activities necessary for preparing and making those decisions in that State than in any other state.

g) the term "equivalent beneficiary" means a resident of a member state of the European Union or of any other European Economic Area state or of a party to the North American Free Trade Agreement, or of Switzerland but only if that resident:

(i) A) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any member state of the European Union or any other European Economic Area state or any party to the North American Free Trade Agreement, or Switzerland and the State from which the benefits of this Convention are claimed under provisions analogous to subparagraph a), subparagraph b), clause (i) of subparagraph c), subparagraph d) or subparagraph e) of paragraph 2 of this Article, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be entitled to the benefits of this Convention by reason of subparagraph a), subparagraph b), clause (i) of subparagraph c), subparagraph d) or subparagraph e) of paragraph 2 of

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this Article if such person were a resident of one of the States under Article 4 (Residence) of this Convention; and

B) with respect to insurance premiums and to income referred to in Article 10 (Dividends), 11 (Interest) or 12 (Royalties) of this Convention, would be entitled under such convention to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or

(ii) is a resident of a Contracting State that is entitled to the benefits of this Convention by reason of subparagraph a), subparagraph b), clause (i) of subparagraph c), subparagraph d) or subparagraph e) of paragraph 2 of this Article.

For the purposes of applying paragraph 3 of Article 10 (Dividends) in order to determine whether a person owning shares, directly or indirectly, in the company claiming the benefits of this Convention is an equivalent beneficiary, such person shall be deemed to hold the same voting power in the company paying the dividend as the company claiming the benefits holds in such company;

h) with respect to dividends, interest or royalties arising in Finland and beneficially owned by a company that is a resident of the United States, a company that is a resident of a member state of the European Union will be treated as satisfying the requirements of subparagraph g)(i)B) of paragraph 7 of this Article for purposes of determining whether such United States resident is entitled to benefits under this paragraph if a payment of dividends, interest or royalties arising in Finland and paid directly to such resident of a member state of the European Union would have been exempt from tax pursuant to any directive of the European Union, notwithstanding that the income tax convention between Finland and that other member state of the European Union would provide for a higher rate of tax with respect to such payment than the rate of tax applicable to such United States company under Article 10 (Dividends), 11 (Interest), or 12 (Royalties) of this Convention."

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i) the term "statutory body" means any legal entity of a public character created by the laws of a Contracting State in which no person other than the State itself, or a political subdivision or a local authority thereof, has an interest.

j) The term "pension fund" as used in this Article means any person that:

(i) is organized under the laws of a Contracting State;

(ii) is established and maintained in that Contracting State primarily to administer or provide pensions or other similar remuneration, including social security payments, or to earn income for the benefit of one or more such arrangements; and

(iii) is either,

A) in the case of Finland, a pension institution, but if such an institution is organized as a company only a mutual pension insurance company, or

B) in the case of the United States, exempt from tax in the United States with respect to the activities described in clause (ii) of this subparagraph."

ARTICLE VII

Article 23 (Elimination of Double Taxation) of the Convention shall be amended by:

a) deleting subparagraph c) of paragraph 1) of Article 23;

b) adding the words "or former citizen or long-term resident" after the words "citizen of the United States" where they appear in paragraph 3; and

c) deleting the words "and subject to such source rules in the domestic laws of the Contracting States as apply for the purpose of limiting the foreign tax credit" where they appear in paragraph 4.

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ARTICLE VIII

Article 26 (Exchange of Information) is omitted and the following is substituted:

"ARTICLE 26
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as may be relevant for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes of every kind imposed by a Contracting State in so far as the taxation thereunder is not contrary to the Convention, including information relating to the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, such taxes. The exchange of information is not restricted by Article 1 (Personal Scope) or Article 2 (Taxes Covered).

2. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, and writings).

3. Any information received under this Article 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) involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes referred to above, or the oversight of such activities. 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.

4. In no case shall the provisions of the preceding paragraphs 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;

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b) to supply information that 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 that 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).

5. 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 purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 4 but in no case shall such limitation be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

6. Notwithstanding paragraph 4, the competent authority of the requested State shall obtain and provide information held by financial institutions, nominees or persons acting in an agency or fiduciary capacity (not including information that would reveal confidential communications between a client and an attorney, solicitor or other legal representative, where the client seeks legal advice), or respecting interests in a person, including bearer shares, regardless of any laws or practices of the requested State that might otherwise preclude the obtaining of such information.

7. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the Convention from taxation imposed by that other State does not inure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Contracting States the obligation to carry out administrative measures that would be contrary to its sovereignty, security, or public policy.

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ARTICLE IX

1. This Protocol shall be subject to ratification and instruments of ratification shall be exchanged as soon as possible.

2. This Protocol shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:

a) in the case of Finland,

(i) in respect of taxes withheld at source, for income derived on or after the first day of the second month next following the date on which the Protocol enters into force; and

(ii) in respect of other taxes, for taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force; and

b) in the case of the United States:

(i) in respect of taxes withheld at source, 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; and

(ii) in respect of other taxes, for taxable years beginning on or after the first day of January next following the date on which the Protocol enters into force;

c) in both Contracting States in respect of the taxes withheld at source covered by paragraph 3 of Article 10 (Dividends), on income derived on or after the first day of January 2007, provided that this Protocol enters into force before December 31, 2007.

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3. This Protocol shall remain in force for so long as the Convention shall remain in force.

IN WITNESS WHEREOF the undersigned, duly authorized thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at Helsinki on the thirty first day of May, 2006, in the English and Finnish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE REPUBLIC OF FINLAND:

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