總統府公報

第 7494 號

中華民國 109 年 7 月 8 日（星期三）

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中華民國 109 年 7 月 8 日
華總一經字第 10920045491 號

茲公布「駐捷克台北經濟文化代表處與捷克經濟文化辦事處實施避免所得稅雙重課稅及防杜逃稅協定」與附件「避免所得稅雙重課稅及防杜逃稅條款」，自中華民國 109 年 5 月 12 日生效。

總　　統　蔡英文
行政院院長　蘇貞昌

註：附「駐捷克台北經濟文化代表處與捷克經濟文化辦事處實施避免所得稅雙重課稅及防杜逃稅協定」與附件「避免所得稅雙重課稅及防杜逃稅條款」內容見本號公報第 2 頁後插頁。

AGREEMENT

BETWEEN THE TAIPEI ECONOMIC AND CULTURAL OFFICE, PRAGUE

AND

THE CZECH ECONOMIC AND CULTURAL OFFICE IN TAIPEI

CONCERNING

THE ENTRY INTO OPERATION OF THE

PROVISIONS ON THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Provisions on the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, that are attached as an Annex of this Agreement, will be applied in the territory where the taxation laws administered by the Ministry of Finance, Taipei are applied and in the territory where the Ministry of Finance of the Czech Republic is the central organ for taxes.

The Czech Economic and Cultural Office in Taipei will inform in writing the Taipei Economic and Cultural Office, Prague about the introduction of the Provisions into the Czech national legal order and, accordingly, about the envisaged date of their entry into operation.

In response, the Taipei Economic and Cultural Office, Prague will inform in writing the Czech Economic and Cultural Office in Taipei that the Provisions have become applicable in the territory where the taxation laws administered by the Ministry of Finance, Taipei are applied, and will confirm that the envisaged date of the entry into operation of the Provisions is identical to the date indicated in the letter of the Czech Economic and Cultural Office in Taipei.

The Taipei Economic and Cultural Office, Prague and the Czech Economic and Cultural Office in Taipei will inform each other in writing about any possible modification of legislation or policy that would result in the suspension or termination of the above mentioned Provisions.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Agreement.

Done in Prague, on 12 December 2017, in two originals in the English language.

For the Taipei Economic and Cultural Office, Prague:

Chung-I Wang
Representative

For the Czech Economic and Cultural Office in Taipei:

Václav Jílek
Representative

PROVISIONS

ON THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

(hereinafter referred to as "Provisions")

Article 1
PERSONS COVERED

These Provisions will apply to persons who are residents of one or both of the territories referred to in sub-paragraphs a) and b) of paragraph 1 of Article 2.

Article 2
TAXES COVERED

1. The existing taxes to which the Provisions will apply are in particular:
   a) in the territory where the Ministry of Finance of the Czech Republic is the central organ for taxes:
      (i) the tax on income of individuals;
      (ii) the tax on income of legal persons;
   b) in the territory where the taxation laws administered by the Ministry of Finance, Taipei are applied:
      (i) the profit-seeking enterprise income tax;
      (ii) the individual consolidated income tax;
      (iii) the income basic tax.

2. The Provisions will apply also to any identical or substantially similar taxes that are imposed after the date of 12 December 2017 in addition to, or in place of, the existing taxes. The competent authority of a territory will notify the competent authority of the other territory of any significant changes that have been made in the taxation laws applicable in the first-mentioned territory.

Article 3
GENERAL DEFINITIONS

1. For the purposes of these Provisions, unless the context otherwise requires:
   a) the terms "a territory" and "the other territory" mean the territory referred to in sub-paragraph a) of paragraph 1 of Article 2 or the territory referred to in sub-paragraph b) of paragraph 1 of Article 2, as the context requires;
   b) the term "person" includes an individual, a company and any other body of persons;
   c) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

d) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory;
e) the term "national" means:
   (i) any individual who, under the laws of a territory, is considered to be a national of that territory;
   (ii) any legal person, partnership or association deriving its status as such from the laws in force in a territory;
f) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a territory, except when the ship or aircraft is operated solely between places in the other territory;
g) the term "competent authority" means:
   (i) in the case of the territory referred to in sub-paragraph a) of paragraph 1 of Article 2, the Minister of Finance or his authorized representative;
   (ii) in the case of the territory referred to in sub-paragraph b) of paragraph 1 of Article 2, the Minister of Finance or his authorized representative.

2. As regards the application of the Provisions at any time by a territory, any term not defined therein will, unless the context otherwise requires, have the meaning that it has at that time under the law of that territory for the purposes of the taxes to which the Provisions apply, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

Article 4
RESIDENT

1. For the purposes of these Provisions, the term "resident of a territory" means any person who, under the laws of that territory, is liable to tax therein by reason of his domicile, residence, place of effective management, place of incorporation or any other criterion of a similar nature, and also includes that territory and any political subdivision or local authority thereof.

2. A person is not a resident of a territory for the purposes of these Provisions if that person is liable to tax in that territory in respect only of income from sources in that territory, provided that this paragraph will not apply to individuals who are residents of the territory referred to in sub-paragraph b) of paragraph 1 of Article 2, as long as resident individuals are taxed only in respect of income from sources in that territory in accordance with its Income Tax Act.

3. Where by reason of the provisions of paragraphs 1 and 2 an individual is a resident of both territories, then his status will be determined as follows:
   a) he will be deemed to be a resident only of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he will be deemed to be a resident only of the territory with which his personal and economic relations are closer (centre of vital interests);
   b) if the territory 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 territory, he will be deemed to be a resident only of the territory in which he has an habitual abode;

c) if he has an habitual abode in both territories or in neither of them, the competent authorities of the territories will settle the question by mutual agreement.

4. Where by reason of the provisions of paragraphs 1 and 2 a person other than an individual is a resident of both territories, the competent authorities of the territories will endeavour to determine by mutual agreement the territory of which such person will be deemed to be a resident for the purposes of these Provisions, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person will not be entitled to any relief or exemption from tax provided by these Provisions except to the extent and in such manner as may be agreed upon by the competent authorities of the territories.

Article 5
PERMANENT ESTABLISHMENT

1. For the purposes of these Provisions, 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. The term "permanent establishment" likewise encompasses:
   a) a building site or a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than twelve months;
   b) the furnishing of services by an enterprise of a territory through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue in the other territory for a period or periods exceeding in the aggregate nine months within any twelve-month period.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" will 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;

f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e),

provided that such activity or, in the case of sub-paragraph f), the overall activity of the fixed place of business, is of a preparatory or auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a territory an authority to conclude contracts in the name of the enterprise, that enterprise will be deemed to have a permanent establishment in that territory 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 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 will not be deemed to have a permanent establishment in a territory merely because it carries on business in that territory 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 territory controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise), will 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 territory from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

2. The term "immovable property" will have the meaning which it has under the law of the territory in which the property in question is situated. The term will 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 will not be regarded as immovable property.

3. The provisions of paragraph 1 will 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 will also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7
BUSINESS PROFITS

1. The profits of an enterprise of a territory will be taxable only in that territory unless the enterprise carries on business in the other territory 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 territory but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a territory carries on business in the other territory through a permanent establishment situated therein, there will in each territory 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 will 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 territory in which the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a territory 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 will preclude that territory from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted will, however, be such that the result will be in accordance with the principles contained in this Article.

5. No profits will 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 will 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 these Provisions, then the provisions of those Articles will not be affected by the provisions of this Article.

Article 8
SHIPPING AND AIR TRANSPORT

1. Profits of an enterprise of a territory derived from the operation of ships or aircraft in international traffic will be taxable only in that territory.

2. For the purpose of this Article, and notwithstanding the provisions of Article 12, profits from the operation of ships or aircraft in international traffic include:
   a) profits from the rental on a full (time or voyage) basis or a bareboat basis of ships or aircraft; and
   b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 will also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

Article 9
ASSOCIATED ENTERPRISES

Where

a) an enterprise of a territory participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or
b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a territory and an enterprise of the other territory,

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.

Article 10
DIVIDENDS

1. Dividends paid by a company which is a resident of a territory to a resident of the other territory may be taxed in that other territory.

2. However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory, the tax so charged will not exceed 10 per cent of the gross amount of the dividends.
   This paragraph will 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 or other rights, not being debt-claims, participating in profits, as well as other income which is subjected to the same taxation treatment as income from shares by the laws of the territory of which the company making the payment is a resident.

4. The provisions of paragraphs 1 and 2 will not apply if the beneficial owner of the dividends, being a resident of a territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, will apply.
5. Where a company which is a resident of a territory derives profits or income from the other territory, that other territory 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 territory or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other territory, 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 territory.

Article 11
INTEREST

1. Interest arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

2. However, such interest may also be taxed in the territory in which it arises and according to the laws of that territory, but if the beneficial owner of the interest is a resident of the other territory, the tax so charged will not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2, interest arising in a territory and beneficially owned by a resident of the other territory will be taxable only in that other territory if such interest is paid:
   a) in connection with the sale on credit of any merchandise or equipment;
   b) to the Government of the other territory, including any political subdivision or local authority thereof, the Central Bank or any financial institution controlled or wholly owned by that Government;
   c) to a resident of the other territory in connection with a loan or credit guaranteed or insured by the Government of the other territory, including any political subdivision or local authority thereof, the Central Bank or any financial institution controlled or wholly owned by that Government.

4. 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 will not be regarded as interest for the purposes of this Article. The term "interest" will not include any item of income which is considered as a dividend under the provisions of paragraph 3 of Article 10.

5. The provisions of paragraphs 1, 2 and 3 will not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory in which the interest arises, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, will apply.

6. Interest will be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the interest, whether he is a resident of a territory or not, has in a territory a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by

such permanent establishment or fixed base, then such interest will be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

7. 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 will apply only to the last-mentioned amount. In such case, the excess part of the payments will remain taxable according to the laws of each territory, due regard being had to the other provisions of these Provisions.

Article 12
ROYALTIES

1. Royalties arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

2. However, such royalties may also be taxed in the territory in which they arise and according to the laws of that territory, but if the beneficial owner of the royalties is a resident of the other territory, the tax so charged will not exceed:
   a) 5 per cent of the gross amount of the royalties paid as a consideration for the use of, or the right to use, industrial, commercial, or scientific equipment, and
   b) 10 per cent of the gross amount of the royalties in all other cases.

3. 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, and films or tapes for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or any industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 will not apply if the beneficial owner of the royalties, being a resident of a territory, carries on business in the other territory in which the royalties arise, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14, as the case may be, will apply.

5. Royalties will be deemed to arise in a territory when the payer is a resident of that territory. Where, however, the person paying the royalties, whether he is a resident of a territory or not, has in a territory a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties will be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

6. 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 will apply only to the last-mentioned amount. In such case, the excess part of the payments will remain taxable according to the laws of each territory, due regard being had to the other provisions of these Provisions.

Article 13
CAPITAL GAINS

1. Gains derived by a resident of a territory from the alienation of immovable property referred to in Article 6 and situated in the other territory may be taxed in that other territory.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or of movable property pertaining to a fixed base available to a resident of a territory in the other territory for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other territory.

3. Gains derived by an enterprise of a territory from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation of such ships or aircraft, will be taxable only in that territory.

4. Gains derived by a resident of a territory from the alienation of shares or other interests deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other territory may be taxed in that other territory.

5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4 will be taxable only in the territory of which the alienator is a resident.

Article 14
INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a territory in respect of professional services or other activities of an independent character will be taxable only in that territory except in the following circumstances, when such income may also be taxed in the other territory:
   a) if he has a fixed base regularly available to him in the other territory for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other territory; or
   b) if his stay in the other territory is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in the other territory may be taxed in that other territory.

2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15
INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a territory in respect of an employment will be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a territory in respect of an employment exercised in the other territory will be taxable only in the first-mentioned territory if all the following conditions are met:
   a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending 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 territory, and
   c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other territory.

3. The term "employer" mentioned in sub-paragraph b) of paragraph 2 means the person having right on the work produced and bearing the responsibility and risk connected with the performance of the work.

4. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated by an enterprise of a territory in international traffic, may be taxed in that territory.

Article 16
DIRECTORS' FEES

Directors' fees and other similar remuneration derived by a resident of a territory in his capacity as a member of the board of directors or any other similar organ of a company which is a resident of the other territory may be taxed in that other territory.

Article 17
ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a territory 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 territory, may be taxed in that other territory.

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, 14 and 15, be taxed in the territory in which the activities of the entertainer or sportsman are exercised.

Article 18
PENSIONS

1. Pensions and any other similar remuneration (including government service pensions and payments made under social security legislation) arising in a territory and paid to a resident of the other territory will be taxable only in the first-mentioned territory.

2. The provisions of paragraph 1 will apply to pensions and any other similar remuneration paid to a resident of a territory, regardless of whether these pensions and any other similar remuneration are paid in consideration of past employment.

Article 19
GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a territory or a political subdivision or a local authority thereof to an individual in respect of services rendered to that territory or subdivision or authority will be taxable only in that territory.
   b) However, such salaries, wages and other similar remuneration will be taxable only in the other territory if the services are rendered in that territory and the individual is a resident of that territory who:
      (i) is a national of that territory; or
      (ii) did not become a resident of that territory solely for the purpose of rendering the services.

2. The provisions of Articles 15, 16, 17 and 18 will apply to salaries, wages and other similar remuneration in respect of services rendered in connection with a business carried on by a territory or a political subdivision or a local authority thereof.

Article 20
STUDENTS

Payments which a student or business apprentice who is or was immediately before visiting a territory a resident of the other territory and who is present in the first-mentioned territory solely for the purpose of his education or training receives for the purpose of his maintenance, education or training will not be taxed in that territory, provided that such payments arise from sources outside that territory.

Article 21
OTHER INCOME

1. Items of income of a resident of a territory, wherever arising, not dealt with in the foregoing Articles of these Provisions will be taxable only in that territory.

2. The provisions of paragraph 1 will 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 territory, carries on business in the other territory through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14, as the case may be, will apply.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, items of income of a resident of a territory not dealt with in the foregoing Articles of these Provisions and arising in the other territory may also be taxed in that other territory.

Article 22
ELIMINATION OF DOUBLE TAXATION

1. In the case of a resident of the territory referred to in sub-paragraph b) of paragraph 1 of Article 2, double taxation will be eliminated as follows:
   Where a resident of this territory derives income from the other territory, the amount of tax on that income paid in the other territory (but excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) and in accordance with the provisions of these Provisions, will be credited against the tax levied in the first-mentioned territory on that resident. The amount of credit, however, will not exceed the amount of the tax in this territory on that income computed in accordance with its taxation laws and regulations.

2. Subject to the provisions of other tax laws of the territory referred to in sub-paragraph a) of paragraph 1 of Article 2 regarding the elimination of double taxation, in the case of a resident of this territory, double taxation will be eliminated as follows:
   This territory, when imposing taxes on its residents, may include in the tax base upon which such taxes are imposed the items of income which according to the provisions of these Provisions may also be taxed in the other territory, but will allow as a deduction from the amount of tax computed on such a base an amount equal to the tax paid in the other territory. Such deduction will not, however, exceed that part of the tax of the first-mentioned territory, as computed before the deduction is given, which is appropriate to the income which, in accordance with the provisions of these Provisions, may be taxed in the other territory.

3. Where in accordance with any provision of these Provisions income derived by a resident of a territory is exempt from tax in that territory, such territory may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 23
NON-DISCRIMINATION

1. Nationals of a territory will not be subjected in the other territory 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 territory in the same circumstances, in particular with respect to residence, are or may be subjected. This

provision will, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the territories.

2. The taxation on a permanent establishment which an enterprise of a territory has in the other territory or a fixed base available to a resident of a territory in the other territory will not be less favourably levied in that other territory than the taxation levied on enterprises or residents of that other territory carrying on the same activities.

3. Nothing in this Article will be construed as obliging a territory to grant to residents of the other territory 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 Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a territory to a resident of the other territory will, 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 territory.

5. Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, will not be subjected in the first-mentioned territory 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 territory are or may be subjected.

6. The provisions of this Article will apply to taxes which are the subject of these Provisions.

7. This Article will not be construed so as to apply to any provision of the laws of a territory which is designed for the purpose of the promotion of economic development and public policy and is not applicable in the case of a permanent establishment of an enterprise which is a resident of the other territory provided that the first-mentioned territory does not impose income tax on the earnings which are repatriated to that enterprise by its permanent establishment.

Article 24
MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of these Provisions, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the territory 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 these Provisions.

2. The competent authority will 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 territory, with a view to the avoidance of taxation which is not in accordance with these Provisions. Any agreement reached will be implemented notwithstanding any time limits in the domestic law of the territories.

3. The competent authorities of the territories will endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Provisions. They may also consult together for the elimination of double taxation in cases not provided for in the Provisions.

4. The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 25
EXCHANGE OF INFORMATION

1. The competent authorities of the territories will exchange such information as is foreseeably relevant for carrying out the provisions of these Provisions or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the territories, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Provisions. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a territory will be treated as secret in the same manner as information obtained under the domestic laws of that territory and will 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 paragraph 1. Such persons or authorities will use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorizes such use.

3. In no case will the provisions of paragraphs 1 and 2 be construed so as to impose on a territory the obligation:
   a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;
   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 territory;
   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).

4. If information is requested by a territory in accordance with this Article, the other territory will use its information gathering measures to obtain the requested information, even though that other territory 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 will such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

5. In no case will the provisions of paragraph 3 be construed to permit a territory 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 26
LIMITATION OF BENEFITS

1. The competent authority of a territory may deny the benefits of these Provisions to any person, or with respect to any transaction, if in its opinion the granting of those benefits would constitute an abuse of these Provisions.

2. These Provisions will in no case prevent either territory from applying the provisions of its domestic laws that are aimed at the prevention of fiscal avoidance or evasion.

Article 27
PRINCIPLE OF RECIPROCITY

These Provisions will be based, if not otherwise stipulated, strictly and exclusively on the principle of reciprocity.

Article 28
THE APPLICATION OF THE PROVISIONS

1. The Taipei Economic and Cultural Office, Prague and the Czech Economic and Cultural Office in Taipei will notify each other when the procedure enabling the application of these Provisions in the respective territory have been completed.

2. The Provisions will be applied:
   a) in respect of taxes withheld at source:
      (i) in the territory referred to in sub-paragraph a) of paragraph 1 of Article 2, to income paid or credited on or after 1st January in the calendar year next following that in which the latter notification has been made;
      (ii) in the territory referred to in sub-paragraph b) of paragraph 1 of Article 2, to income payable on or after 1st January in the calendar year next following that in which the latter notification has been made;
   b) in respect of other taxes on income, to income in any taxable year beginning on or after 1st January in the calendar year next following that in which the latter notification has been made.

Article 29
SUSPENSION AND TERMINATION OF THE APPLICATION OF THE PROVISIONS

1. These Provisions will remain applicable until a decision on their suspension or termination has been made by the respective competent authority in one of the territories.

2. When such decision is made in accordance with the previous paragraph, the Taipei Economic and Cultural Office, Prague or the Czech Economic and Cultural Office in Taipei will notify that such decision has been made and, consequently, that the Provisions are no more applicable in the respective territory. The Provisions will cease to be applied in both territories as follows:
   a) in respect of taxes withheld at source:
      (i) in the territory referred to in sub-paragraph a) of paragraph 1 of Article 2, to income paid or credited on or after 1st January in the calendar year next following that in which the notification has been made;
      (ii) in the territory referred to in sub-paragraph b) of paragraph 1 of Article 2, to income payable on or after 1st January in the calendar year next following that in which the notification has been made;
   b) in respect of other taxes on income, to income in any taxable year beginning on or after 1st January in the calendar year next following that in which the notification has been made.

駐捷克台北經濟文化代表處與捷克經濟文化辦事處

實施避免所得稅雙重課稅及防杜逃稅協定

（中譯本）

本協定避免所得稅雙重課稅及防杜逃稅條款（如附件）適用於臺北財政部主管稅法所適用之領域及捷克共和國財政部為租稅中央主管機關所屬之領域。

捷克經濟文化辦事處應以書面通知駐捷克台北經濟文化代表處前述協定條款制定成為捷克國家法令及預定實施日期。

駐捷克台北經濟文化代表處應以書面回復捷克經濟文化辦事處前述協定條款在臺北財政部主管稅法所適用領域之適用，確認其預定實施日期與捷克經濟文化辦事處書面通知所載日期一致。

駐捷克台北經濟文化代表處與捷克經濟文化辦事處應以書面相互通知對方，任何可能造成前述協定條款中止或終止之法律或政策修訂。

為此，雙方代表業經合法授權，爰於本協定簽署，以昭信守。

本協定以英文繕製兩份，西元二〇一七年十二月十二日於布拉格簽署。

駐捷克台北經濟文化代表處	捷克經濟文化辦事處
汪忠一 代表	易禮哲 代表

避免所得稅雙重課稅及防杜逃稅條款

（以下簡稱本協定條款）

第一條　適用之人

本協定條款適用於具有第二條第一項第一款及第二款所稱一方或雙方領域居住者身分之人。

第二條　適用之租稅

一、本協定條款所適用之現行租稅，尤指：

(一)在捷克共和國財政部為租稅中央主管機關所屬之領域，指：

1.個人所得稅。

2.法人所得稅。

(二)在臺北財政部主管之稅法所適用之領域，指：

1.營利事業所得稅。

2.個人綜合所得稅。

3.所得基本稅額。

二、本協定條款亦適用於西元二〇一七年十二月十二日之後新開徵或替代現行租稅，其與現行租稅相同或實質類似之任何租稅。一方領域之主管機關對於適用於該領域稅法之重大修訂，應通知他方領域之主管機關。

第三條　一般定義

一、除上下文另有規定外，本協定條款稱：

(一)「一方領域」及「他方領域」，視上下文指第二條第一項第一款或第二款所稱領域。

(二)「人」，包括個人、公司及其他任何人之集合體。

(三)「公司」，指法人或依稅法規定視同法人之任何實體。

(四)「一方領域之企業」及「他方領域之企業」，分別指由一方領域之居住者所經營之企業及他方領域之居住者所經營之企業。

(五)「國民」：

1.依一方領域法律認定為該領域國民之任何個人。

2.依一方領域適用法律規定取得其身分之任何法人、合夥組織或社團。

(六)「國際運輸」，指一方領域之企業以船舶或航空器所經營之運輸業務

。但該船舶或航空器僅於他方領域境內經營者，不在此限。

(七)「主管機關」：

1. 在第二條第一項第一款所稱領域，指財政部部長或其授權之代表。
2. 在第二條第一項第二款所稱領域，指財政部部長或其授權之代表。

二、本協定條款於一方領域適用時，未於本協定條款界定之任何名詞，除上下文另有規定外，依本協定條款適用租稅當時之法律規定辦理，該領域稅法之規定應優先於該領域其他法律之規定。

第四條　居住者

一、本協定條款稱「一方領域之居住者」，指依該領域法律規定，因住所、居所、實際管理處所、設立登記地或其他類似標準而負有納稅義務之人，包括該領域暨其所屬任何行政區或地方機關。

二、僅因有源自一方領域之所得而負該領域納稅義務之人，非為本協定條款所稱一方領域之居住者。但第二條第一項第二款所稱領域之居住者個人依據其所得稅法規定僅就源自該領域之所得課稅者，不適用本項規定。

三、個人依前二項規定，如同為雙方領域之居住者，其身分決定如下：

(一)於一方領域內有永久住所，視其為該領域之居住者；如於雙方領域內均有永久住所，視其為與其個人及經濟利益較為密切之領域之居住者（主要利益中心）。

(二)如主要利益中心所在地領域不能確定，或於雙方領域內均無永久住所，視其為有經常居所之領域之居住者。

(三)如於雙方領域內均有或均無經常居所，雙方領域之主管機關應相互協議解決之。

四、個人以外之人依第一項及第二項規定，如同為雙方領域之居住者，雙方領域主管機關應考量其實際管理處所、設立登記或成立地及任何其他相關因素，透過相互協議，致力決定基於本協定條款目的該人應視為居住者所屬之領域。如雙方未能達成協議，除雙方領域主管機關同意之範圍及方式外，該人不得享有本協定條款所規定之任何減稅或免稅利益。

第五條　常設機構

一、本協定條款稱「常設機構」，指企業從事全部或部分營業之固定營業場所。

二、「常設機構」包括：
(一)管理處。
(二)分支機構。
(三)辦事處。
(四)工廠。
(五)工作場所。
(六)礦場、油井或氣井、採石場或任何其他天然資源開採場所。

三、「常設機構」亦包括：
(一)建築工地、營建、裝配或安裝工程或相關監督活動持續超過十二個月者。
(二)一方領域企業透過其員工或其他僱用之人員提供服務，在他方領域從事該等性質活動之期間，於任何十二個月期間內持續或合計超過九個月者。

四、前三項之「常設機構」，不包括下列各款，但以該等活動或第六款固定營業場所之整體活動具有準備或輔助性質者為限：
(一)專為儲存、展示或運送屬於該企業之貨物或商品目的而使用設備。
(二)專為儲存、展示或運送目的而儲備屬於該企業之貨物或商品。
(三)專為供其他企業加工目的而儲備屬於該企業之貨物或商品。
(四)專為該企業採購貨物或商品或蒐集資訊目的所設置之固定營業場所。
(五)專為該企業從事其他活動目的所設置之固定營業場所。
(六)專為從事前五款任一組合之活動所設置之固定營業場所。

五、當一人（除第六項所稱具有獨立身分之代理人外）代表他方領域之企業，有權並經常於一方領域內以該企業名義簽訂契約，其為該企業所從事之任何活動，視該企業於該一方領域有常設機構，不受第一項及第二項規定之限制。但該人經由固定營業場所僅從事前項之活動，依該項規定，該固定營業場所不視為常設機構。

六、企業僅透過經紀人、一般佣金代理商或其他具有獨立身分之代理人，以其通常之營業方式，於一方領域內從事營業者，不得視該企業於該領域有常設機構。

七、一方領域之居住者公司，控制或受控於他方領域之居住者公司或於他方領域內從事營業之公司（不論其是否透過常設機構或其他方式），均不得就此事實認定任一公司為另一公司之常設機構。

第六條　不動產所得

一、一方領域之居住者取得位於他方領域內之不動產所產生之所得（包括農業或林業所得），他方領域得予課稅。

二、稱「不動產」，應具有財產所在地領域法律規定之含義，在任何情況下皆應包括附著於不動產之財產、供農林業使用之牲畜及設備、適用與地產有關一般法律規定之權利、不動產收益權，及有權取得因開採或有權開採礦產、水資源與其他天然資源所給付變動或固定報酬之權利。船舶及航空器不視為不動產。

三、直接使用、出租或以其他任何方式使用不動產所取得之所得，應適用第一項規定。

四、由企業之不動產及供執行業務使用之不動產所產生之所得，亦適用第一項及第三項規定。

第七條　營業利潤

一、一方領域之企業，除經由其於他方領域內之常設機構從事營業外，其利潤僅由該一方領域課稅。該企業如經由其於他方領域內之常設機構從事營業，他方領域得就該企業之利潤課稅，但以歸屬於該常設機構之利潤為限。

二、除第三項規定外，一方領域之企業經由其於他方領域內之常設機構從事營業，各領域歸屬該常設機構之利潤，應與該常設機構為一區隔及分離之企業，於相同或類似條件下從事相同或類似活動，並以完全獨立之方式與該常設機構所屬企業從事交易時，所應獲得之利潤相同。

三、計算常設機構之利潤時，應准予減除該常設機構為營業目的而發生之費用，包括行政及一般管理費用，不論該費用係於常設機構所在地領域或他處發生。

四、一方領域慣例依企業全部利潤按比例分配予各部門利潤之原則，計算應歸屬於常設機構之利潤者，不得依第二項規定排除該一方領域之分配慣

例。但採用該分配方法所獲致之結果，應與本條所定之原則相符。

五、常設機構僅為該企業採購貨物或商品，不得對該常設機構歸屬利潤。

六、前五項有關常設機構利潤之歸屬，除有正當且充分理由者外，每年應採用相同方法決定之。

七、利潤中如包含本協定條款其他條文規定之所得項目，各該條文之規定，應不受本條規定之影響。

第八條　海空運輸

一、一方領域之企業以船舶或航空器經營國際運輸業務之利潤，僅由該一方領域課稅。

二、本條稱以船舶或航空器經營國際運輸業務之利潤，包括下列項目，不受第十二條規定之限制，但以該出租或該使用、維護或出租係與以船舶或航空器經營國際運輸業務有附帶關係者為限：

(一)以計時、計程或光船方式出租船舶或航空器之利潤。

(二)使用、維護或出租用於運送貨物或商品之貨櫃（包括貨櫃運輸之拖車及相關設備）之利潤。

三、參與聯營、合資企業或國際營運機構之利潤，亦適用第一項規定。但以歸屬於參與聯合營運之比例所取得之利潤為限。

第九條　關係企業

兩企業間有下列情事之一，於其商業或財務關係上所訂定之條件，異於雙方為獨立企業所為，其任何應歸屬其中一企業之利潤因該等條件而未歸屬於該企業者，得計入該企業之利潤，並予以課稅：

(一)一方領域之企業直接或間接參與他方領域企業之管理、控制或資本。

(二)相同之人直接或間接參與一方領域之企業及他方領域企業之管理、控制或資本。

第十條　股利

一、一方領域之居住者公司給付他方領域之居住者之股利，他方領域得予課稅。

二、前項給付股利之公司如係一方領域之居住者，該領域亦得依其法律規定

，對該股利課稅。但股利之受益所有人如為他方領域之居住者，其課徵之稅額不得超過股利總額之百分之十。

本項規定不影響對該公司用以發放股利之利潤所課徵之租稅。

三、本條稱「股利」，指自股份或其他非屬債權而得參與利潤分配之權利所取得之所得，及其他依給付股利之公司居住地領域法律規定，與股份所得課徵相同租稅之所得。

四、股利受益所有人如為一方領域之居住者，於給付股利公司為居住者之他方領域內，經由其於他方領域內之常設機構從事營業或於該領域內之固定處所執行業務，且與股利有關之股份持有與該常設機構或固定處所有實際關聯時，不適用第一項及第二項規定，而視情況適用第七條或第十四條規定。

五、一方領域之居住者公司自他方領域取得利潤或所得，其所給付之股利或其未分配盈餘，即使全部或部分來自該他方領域之利潤或所得，他方領域不得對該公司給付之股利課徵任何租稅或對該公司之未分配盈餘課徵未分配盈餘稅。但該股利係給付予他方領域之居住者，或與該股利有關之股份持有與他方領域內之常設機構或固定處所有實際關聯者，不在此限。

第十一條　利息

一、源自一方領域而給付他方領域居住者之利息，他方領域得予課稅。

二、前項利息來源地領域亦得依該領域之法律規定，對該利息課稅。但利息之受益所有人如為他方領域之居住者，其課徵之稅額不得超過利息總額之百分之十。

三、源自一方領域而由他方領域居住者受益所有之利息，符合下列規定之一者，應僅由他方領域課稅，不受前項規定之限制：

(一)與賒銷任何商品或設備有關之利息。

(二)給付予他方領域政府（包含其所屬行政區或地方機關）、中央銀行或任何由他方領域政府控制或完全擁有之金融機構之利息。

(三)給付予他方領域居住者之利息，且與利息有關之貸款或信用係由他方領域政府（包含其所屬行政區或地方機關）、中央銀行或任何由他方領域政府控制或完全擁有之金融機構提供保證或保險者。

四、本條稱「利息」，指由各種債權所孳生之所得，不論有無抵押擔保及是否有權參與債務人利潤之分配，尤指政府債券之所得及債券或信用債券之所得，包括附屬於該等債券之溢價收入及獎金。延遲給付之違約金非屬本條所稱「利息」。本條利息應不包括任何依第十條第三項規定視為股利之所得。

五、利息受益所有人如為一方領域之居住者，經由其於利息來源之他方領域內之常設機構從事營業或他方領域內之固定處所執行業務，且與利息給付有關之債權與該常設機構或固定處所有實際關聯時，不適用第一項至第三項規定，而視情況適用第七條或第十四條規定。

六、由一方領域之居住者所給付之利息，視為源自該領域。但利息給付人如於一方領域內有常設機構或固定處所，而與該利息之給付有關債務之發生與該常設機構或固定處所有關聯，且該利息係由該常設機構或固定處所負擔者，不論該利息給付人是否為該一方領域之居住者，該利息視為源自該常設機構或固定處所所在地領域。

七、利息給付人與受益所有人間，或上述二者與其他人間有特殊關係，其債權有關之利息數額，超過利息給付人與受益所有人在無上述特殊關係下所同意之數額，本條規定應僅適用於後者之數額。在此情形下，各領域應考量本協定條款之其他規定，依其法律對此項超額給付課稅。

第十二條　權利金

一、源自一方領域而給付他方領域居住者之權利金，他方領域得予課稅。

二、前項權利金來源地領域亦得依該領域之法律規定，對該權利金課稅。但權利金之受益所有人如為他方領域之居住者，其課徵之稅額不得超過：

(一)使用或有權使用工業、商業或科學設備所給付之對價，為權利金總額之百分之五。

(二)其他情況，為權利金總額之百分之十。

三、本條稱「權利金」，指使用或有權使用文學、藝術或科學作品之任何著作權，包括電影及供電視或廣播播映之影片或錄音帶，任何專利權、商標權、設計或模型、計畫、秘密處方或製造程序，或工業、商業或科學設備，或有關工業、商業或科學經驗之資訊，所取得作為對價之任何方式之給付。

四、權利金受益所有人如為一方領域之居住者，經由其於權利金來源之他方領域內之常設機構從事營業或他方領域內之固定處所執行業務，且與權利金給付有關之權利或財產與該常設機構或固定處所有實際關聯時，不適用第一項及第二項規定，而視情況適用第七條或第十四條規定。

五、由一方領域之居住者給付之權利金，視為源自該領域。但權利金給付人如於一方領域內有常設機構或固定處所，而權利金給付義務之發生與該常設機構或固定處所有關聯，且該權利金係由該常設機構或固定處所負擔者，不論該權利金給付人是否為一方領域之居住者，該權利金視為源自該常設機構或固定處所所在地領域。

六、權利金給付人與受益所有人間，或上述二者與其他人間有特殊關係，考量使用、權利或資訊等因素所給付之權利金數額，超過權利金給付人與受益所有人在無上述特殊關係下所同意之數額，本條規定應僅適用於後者之數額。在此情形下，各領域應考量本協定條款之其他規定，依其法律對此項超額給付課稅。

第十三條　財產交易所得

一、一方領域之居住者轉讓位於他方領域內合於第六條所稱不動產而取得之利得，他方領域得予課稅。

二、一方領域之企業轉讓其於他方領域內常設機構營業資產中之動產而取得之利得，或一方領域之居住者轉讓其於他方領域內執行業務固定處所之動產而取得之利得，包括轉讓該常設機構（單獨或連同整個企業）或固定處所而取得之利得，他方領域得予課稅。

三、一方領域之企業轉讓經營國際運輸業務之船舶或航空器或附屬於該等船舶或航空器營運之動產而取得之利得，僅由該領域課稅。

四、一方領域之居住者轉讓股份或其他權益，如該股份或其他權益超過百分之五十之價值直接或間接來自於他方領域之不動產，其取得之利得，他方領域得予課稅。

五、轉讓前四項以外之任何財產而取得之利得，僅由該轉讓人為居住者之領域課稅。

第十四條　執行業務

一、一方領域之居住者因執行業務或其他具有獨立性質活動而取得之所得，僅由該一方領域課稅。但該居住者有下列情況之一者，他方領域亦得課稅：

(一)為執行該等活動而於他方領域內設有固定處所。於此情況下，他方領域僅得就歸屬於該固定處所之所得課稅。

(二)相關會計年度中開始或結束之任何十二個月期間內，於他方領域持續居留或合計居留期間達一百八十三天，他方領域僅得就該居住者於其領域內執行該等活動而取得之所得課稅。

二、所稱「執行業務」，包括具有獨立性質之科學、文學、藝術、教育或教學等活動，與醫師、律師、工程師、建築師、牙醫師及會計師等獨立性質之活動。

第十五條　受僱所得

一、除第十六條、第十八條及第十九條規定外，一方領域之居住者因受僱而取得之薪津、工資及其他類似報酬，除其勞務係於他方領域提供者外，應僅由該一方領域課稅。前述受僱勞務如於他方領域內提供，他方領域得對該項勞務取得之報酬課稅。

二、一方領域之居住者於他方領域內提供勞務而取得之報酬，符合下列所有規定者，應僅由該一方領域課稅，不受前項規定之限制：

(一)該所得人於相關會計年度中開始或結束之任何十二個月期間內，於他方領域持續居留或合計居留期間不超過一百八十三天。

(二)該項報酬由非為他方領域居住者之雇主所給付或代表該雇主給付。

(三)該項報酬非由該雇主於他方領域內之常設機構或固定處所負擔。

三、第二項第二款所稱「雇主」，指對工作產出具有權利，且承擔與該工作執行相關之責任及風險之人。

四、因受僱於一方領域之企業所經營國際運輸業務之船舶或航空器上提供勞務而取得之報酬，該一方領域得予課稅，不受前三項規定之限制。

第十六條　董事報酬

一方領域之居住者因擔任他方領域之居住者公司董事會之董事或任何其他類似組織之職務而取得之董事報酬及其他類似報酬，他方領域得予課稅。

第十七條　表演人及運動員

一、一方領域之居住者為表演人，如戲劇、電影、廣播或電視演藝人員或音樂家，或為運動員，於他方領域內從事個人活動而取得之所得，他方領域得予課稅，不受第十四條及第十五條規定之限制。

二、表演人或運動員以該身分從事個人活動之所得，如不歸屬於該表演人或運動員本人而歸屬於其他人，該表演人或運動員活動舉行地領域對該項所得得予課稅，不受第七條、第十四條及第十五條規定之限制。

第十八條　養老金

一、源自一方領域並給付予他方領域居住者之養老金及其他類似報酬（含政府勞務養老金及社會安全制度給付），僅由前者領域課稅。

二、給付予一方領域居住者之養老金及其他類似報酬，無論是否基於過去受僱關係，均適用前項規定。

第十九條　政府勞務

一、(一)一方領域、其所屬行政區或地方機關給付予為該領域、行政區或地方機關提供勞務之個人之薪津、工資或其他類似報酬（養老金除外），僅由該一方領域課稅。

(二)但該等勞務如係由他方領域之居住者個人於他方領域提供，且該個人符合下列條件之一者，該薪津、工資及其他類似報酬僅由他方領域課稅：

1.係他方領域之國民。

2.非專為提供上述勞務之目的而成為他方領域之居住者。

二、為一方領域、其所屬行政區或地方機關所經營之事業提供勞務而取得之薪津、工資及其他類似報酬，應適用第十五條至第十八條規定。

第二十條　學生

學生或企業見習生專為教育或訓練目的而於一方領域停留，且於訪問該一方領域期間或於訪問前際為他方領域之居住者，其為生活、教育或訓練目的而取得源自該一方領域以外之給付，該一方領域應予免稅。

第二十一條　其他所得

一、一方領域之居住者取得非屬本協定條款前述各條規定之所得，不論其來源地為何，僅由該領域課稅。

二、所得人如係一方領域之居住者，經由其於他方領域內之常設機構從事營業或固定處所執行業務，且與該所得給付有關之權利或財產與該常設機構或固定處所有實際關聯時，除第六條第二項定義之不動產所產生之所得外，不適用前項規定，而視情況適用第七條或第十四條規定。

三、一方領域之居住者取得源自他方領域非屬本協定條款前述各條規定之所得，他方領域亦得予課稅，不受前二項規定之限制。

第二十二條　雙重課稅之消除

一、第二條第一項第二款所稱領域之居住者，應依下列規定消除雙重課稅：
該領域之居住者取得源自他方領域之所得，依據本協定條款之規定於他方領域就該所得繳納之稅額（如係股利所得，不包括用以發放該股利之利潤所繳納之稅額），應准予扣抵該領域對該居住者所課徵之稅額。但扣抵之數額，不得超過依該領域稅法及相關法令規定對該所得課徵之稅額。

二、依第二條第一項第一款所稱領域有關消除雙重課稅之其他稅法規定，該領域之居住者應依下列規定消除雙重課稅：
該領域對其居住者課稅時，得將依據本協定條款規定他方領域得予課稅之所得項目納入稅基，且准自依該稅基計算之稅額中扣除該居住者在他方領域已納之稅額。但扣除之數額不得超過扣除前依據本協定條款規定他方領域得予課稅之所得歸屬之稅額。

三、一方領域之居住者取得之所得，依據本協定條款規定，該領域准予免稅者，該領域於計算該居住者其餘所得之稅額時，仍得將該免稅所得納入考量。

第二十三條　無差別待遇

一、一方領域之國民於他方領域內，不應較他方領域之國民於相同情況下，特別是基於居住之關係，負擔不同或較重之任何租稅或相關之要求。前段規定亦應適用於非一方領域居住者或非為雙方領域居住者之人，不受第一條規定之限制。

二、一方領域之企業於他方領域內有常設機構或一方領域之居住者於他方領域內有固定處所，他方領域對該常設機構或固定處所之課稅，不應較經營相同業務之他方領域之企業或居住者作更不利課徵。

三、本條規定不應解釋為一方領域考量婚姻狀況或家庭責任而給予其居住者個人基於租稅目的之免稅額、租稅優惠或減免稅規定，應同樣給予他方領域之居住者。

四、除適用第九條、第十一條第七項或第十二條第六項規定外，一方領域之企業給付他方領域居住者之利息、權利金及其他款項，於計算該企業之應課稅利潤時，應與給付前者領域居住者之條件相同而准予減除。

五、一方領域之企業，其資本之全部或部分由一個以上之他方領域居住者直接或間接持有或控制者，該企業在前者領域所負擔之任何租稅或相關要求，不應與前者領域之類似企業負擔或可能負擔之租稅或相關要求不同或較其為重。

六、本條規定僅適用於本協定條款所規定之租稅。

七、一方領域如未就常設機構匯回其所屬企業之盈餘課徵所得稅，其基於促進經濟發展及公共政策目的所制定不適用於他方領域居住者企業之常設機構之法律規定，不得解釋為有本條之適用。

第二十四條　相互協議之程序

一、任何人如認為一方或雙方領域之行為，對其發生或將發生不符合本協定條款規定之課稅，不論各該領域國內法之救濟規定，得向其本人之居住地領域主管機關提出申訴；如申訴案屬第二十三條第一項規定之範疇，得向其本人為國民所屬領域之主管機關提出申訴，此項申訴應於不符合本協定條款規定課稅首次通知起三年內為之。

二、主管機關如認為該申訴有理，且其本身無法獲致適當之解決，應致力與他方領域之主管機關相互協議解決，以避免發生不符合本協定條款規定

之課稅。達成之任何協議應予執行，不受各該領域國內法任何期間規定之限制。

三、雙方領域之主管機關應相互協議，致力解決有關本協定條款之解釋或適用上發生之任何困難或疑義。雙方並得共同諮商，以消除本協定條款未規定之雙重課稅問題。

四、雙方領域之主管機關為達成前三項規定之協議，得直接相互聯繫。

第二十五條　資訊交換

一、雙方領域之主管機關於不違反本協定條款之範圍內，應相互交換所有可能有助於實施本協定條款之規定或為雙方領域、其所屬行政區或地方機關所課徵任何租稅有關國內法之行政或執行之資訊。資訊交換不以第一條及第二條規定之範圍為限。

二、一方領域依前項規定取得之任何資訊，應按其依該領域國內法規定取得之資訊同以密件處理，且僅能揭露予與前項所稱租稅之核定、徵收、執行、起訴、行政救濟之裁定之相關人員或機關（包括法院及行政部門）。上該人員或機關僅得為前述目的而使用該資訊。但得於公開法庭之訴訟程序或司法判決中揭露之。一方領域取得之資訊，得依雙方領域法律及提供資訊一方領域主管機關之授權，作其他目的使用，不受前述規定之限制。

三、前二項規定不得解釋為一方領域有下列義務：

(一)執行與一方或他方領域之法律與行政慣例不一致之行政措施。

(二)提供依一方或他方領域之法律規定或正常行政程序無法獲得之資訊。

(三)提供可能洩露任何貿易、營業、工業、商業或專業秘密或交易方法之資訊，或其揭露將有違公共政策（公序）之資訊。

四、一方領域依據本條規定所要求提供之資訊，他方領域雖基於本身課稅目的無需此等資訊，亦應利用其資訊蒐集措施以獲得該等資訊。前述義務應受前項規定之限制，但不得解釋為他方領域得僅因該等資訊無國內利益而引用前項規定不提供是項資訊。

五、第三項之規定無論在任何情況下均不得解釋為准許一方領域，僅因資訊為銀行、其他金融機構、被委任人或具代理或受託身分之人所持有、或涉及一人所有權利益為由，而拒絕提供資訊。

第二十六條　利益限制

一、一方領域之主管機關如認為授與本協定條款利益將構成本協定條款濫用，得否准任何人或相關之任何交易適用該等利益。

二、本協定條款之規定不得解釋為禁止任一方領域適用以防杜避稅或逃稅為目的之國內法律規定。

第二十七條　互惠原則

除另有規定外，本協定條款應嚴格遵守互惠原則

第二十八條　本協定條款之適用

一、捷克經濟文化辦事處與駐捷克台北經濟文化代表處於各自領域完成使本協定條款得以適用之程序後，應相互通知對方。

二、本協定條款適用於：

(一)就源扣繳稅款：

1. 在第二條第一項第一款所稱領域，為後通知發出日所屬年度之次一曆年一月一日以後實際或轉帳給付之所得。
2. 在第二條第一項第二款所稱領域，為後通知發出日所屬年度之次一曆年一月一日以後應付之所得。

(二)其他稅款，為後通知發出日所屬年度之次一曆年一月一日以後課稅年度之所得。

第二十九條　本協定條款適用之中止及終止

一、本協定條款於一方領域主管機關作出中止或終止決定前仍繼續適用。

二、依前項作出決定時，捷克經濟文化辦事處或駐捷克台北經濟文化代表處應將該決定及本協定條款不再適用於該領域，通知另一方。本協定條款於雙方領域停止適用於：

(一)就源扣繳稅款：

1. 在第二條第一項第一款所稱領域，為通知發出日所屬年度之次一曆年一月一日以後實際或轉帳給付之所得。
2. 在第二條第一項第二款所稱領域，為通知發出日所屬年度之次一曆年一月一日以後應付之所得。

(二)其他稅款，為通知發出日所屬年度之次一曆年一月一日以後課稅年度

之所得。

總統令

中華民國 109 年 6 月 30 日

特派伍錦霖為 109 年公務人員高等考試一級暨二級考試典試委員長。

總　　統　蔡英文
行政院院長　蘇貞昌

總統令

中華民國 109 年 7 月 7 日

公務員懲戒委員會委員長姜仁脩因組織更名，應予免職。

特任姜仁脩為懲戒法院院長。

此令自中華民國 109 年 7 月 17 日生效。

總　　統　蔡英文
行政院院長　蘇貞昌

總統令

中華民國 109 年 7 月 2 日
華總二榮字第 10900064880 號

靜宜大學文學院前院長趙天儀，篤行溫毅，器識淹雅。少歲卒業國立臺灣大學哲學研究所，淬勉砥礪，燦然有成。歷任臺灣大學、國立編譯館、靜宜大學教授暨編纂等職，躬蹈默化薪傳理念，形塑優質研習風氣，薰沐甄陶，琢玉芬芳。公餘握鉛不輟，偏擅散文新詩創作，旁及兒童文學論述；描繪底層社會景況，勤抒愛鄉護土情懷，筆觸真淳樸簡，題材贍逸多元，敷章體調，曉暢清拔，尤以《牡嶺街》、《變色鳥》暨《風雨樓隨筆》等稱美。復邀集同好籌辦《笠》詩社，厚植人文感悟鏈結，張拓宏觀知性視野；首闢兒童詩園專欄，增益磋磨交流管道，意切辭豐，兼容並蓄；瑰才抱德，卓著時譽。

曾獲頒巫永福評論獎、臺中市大墩文學貢獻獎、吳三連文學獎新詩類等殊榮，銜華佩實，群倫共仰。綜其生平，杏壇立百年惠愛之志，翰苑揚儒士欽羨之聲，弼中肆外，矩範昭彰。遽聞遐齡殂謝，軫悼良殷，應予明令褒揚，用示政府嘉念碩彥之至意。

總　　統　蔡英文
行政院院長　蘇貞昌

專　　載

新任總統府、國史館、國家安全會議、國家安全局、行政院及考試院等政務人員宣誓典禮

新任總統府、國史館、國家安全會議、國家安全局、行政院及考試院等 57 員政務人員於本（109）年 6 月 29 日（星期一）上午 10 時正在總統府 3 樓大禮堂宣誓，由總統監誓，副總統賴清德、行政院院長蘇貞昌、考試院院長伍錦霖、總統府秘書長蘇嘉全、第三局局長李南陽及國家安全會議秘書長顧立雄等在場觀禮。

宣誓人員包括：國史館館長陳儀深、僑務委員會委員長童振源、考選部部長許舒翔、銓敘部部長周弘憲、總統府副秘書長劉建忻、公務人員保障暨培訓委員會主任委員郭芳煜、國家安全局局長邱國正、國防部副部長張哲平、張冠群、國家安全會議副秘書長陳文政、蔡明彥、內政部政務次長花敬群、陳宗彥、外交部政務次長謝武樵、徐斯儉、財政部政務次長莊翠雲、阮清華、教育部政務次長劉孟奇、蔡清華、法務部政務次長陳明堂、蔡碧仲、經濟部政務次長曾文生、交通部政務次長王國材、陳彥伯、勞動部政務次長王尚志、王安邦、

行政院農業委員會副主任委員陳添壽、黃金城、衛生福利部政務次長何啟功、蘇麗瓊、行政院環境保護署副署長蔡鴻德、文化部政務次長蕭宗煌、彭俊亨、科技部政務次長謝達斌、林敏聰、國家發展委員會副主任委員鄭貞茂、游建華、大陸委員會副主任委員邱垂正、金融監督管理委員會副主任委員許永欽、海洋委員會副主任委員莊慶達、蔡清標、僑務委員會副委員長徐佳青、銓敘部政務次長郝培芝、國軍退除役官兵輔導委員會副主任委員李文忠、周皓瑜、原住民族委員會副主任委員谷縱•喀勒芳安、伊萬•納威 Iwan Nawi、客家委員會副主任委員鍾孔炤、行政院公共工程委員會副主任委員顏久榮、行政院主計總處副主計長蔡鴻坤、行政院人事行政總處副人事長蘇俊榮、國立故宮博物院副院長黃永泰、行政院原子能委員會副主任委員吳美玲、國家安全局副局長柯承亨、內政部空中勤務總隊總隊長井延淵、衛生福利部中央健康保險署署長李伯璋、海洋委員會海洋保育署署長黃向文。

總統活動紀要

記事期間：

109 年 6 月 26 日至 109 年 7 月 2 日

6 月 26 日（星期五）

- 無公開行程

6 月 27 日（星期六）

- 無公開行程

6 月 28 日（星期日）

- 無公開行程

6 月 29 日（星期一）

- 主持新任總統府、國史館、國家安全會議、國家安全局、行政院及考試院等政務人員宣誓典禮
- 接見第 16 屆中華民國傑出建築師獎得獎人一行
- 出席國防部後備指揮部支援口罩增產有功人員表揚典禮致詞（臺北市中正區）

6 月 30 日（星期二）

- 蒞臨中華電信 5G 啟用典禮致詞暨接受媒體相關時事提問（臺北市中正區）
- 蒞臨第 63 屆會計師節聯歡晚會致詞（臺北市信義區）

7 月 1 日（星期三）

- 無公開行程

7 月 2 日（星期四）

- 無公開行程

副總統活動紀要

記事期間：

109 年 6 月 26 日至 109 年 7 月 2 日

6 月 26 日（星期五）

- 無公開行程

6 月 27 日（星期六）

- 無公開行程

6 月 28 日（星期日）

- 無公開行程

6 月 29 日（星期一）

- 陪同總統出席新任總統府、國史館、國家安全會議、國家安全局、行政院及考試院等政務人員宣誓典禮

6 月 30 日（星期二）

- 參訪黑橋牌食品股份有限公司（臺南市南區）
- 蒞臨中華民國全國建築師公會第 14、15 屆理事長交接典禮致詞(臺北市中正區）

7 月 1 日（星期三）

- 出席 109 年全國戶政日慶祝活動頒獎表揚典禮致詞（臺北市中正區）
- 蒞臨 FCA 創新商務獎頒獎典禮致詞（臺北市信義區）

7 月 2 日（星期四）

- 出席陳文成事件 39 週年紀念晚會致詞（臺北市大安區）

轉　　載

（轉載司法院大法官議決釋字第 792 號解釋）
（內容見本號公報第 8 頁後插頁）

解　釋

司法院　令

發文日期：中華民國109年6月19日

發文字號：院台大二字第1090017996號

公布本院大法官議決釋字第 792 號解釋

附釋字第 792 號解釋

院長　許　宗　力

司法院釋字第 792 號解釋

解釋文

最高法院 25 年非字第 123 號刑事判例稱：「……販賣鴉片罪，……以營利為目的將鴉片購入……其犯罪即經完成……」及 67 年台上字第 2500 號刑事判例稱：「所謂販賣行為，……祇要以營利為目的，將禁藥購入……，其犯罪即為完成……屬犯罪既遂。」部分，與毒品危害防制條例第 4 條第 1 項至第 4 項所定販賣毒品既遂罪，僅限於「銷售賣出」之行為已完成始足該當之意旨不符，於此範圍內，均有違憲法罪刑法定原則，牴觸憲法第 8 條及第 15 條保障人民人身自由、生命權及財產權之意旨。

解釋理由書

聲請人陳○忠（下稱聲請人一）於中華民國 98 年間因違反毒品危害防制條例案件（下稱毒品案件），經臺灣板橋地方法院判決後，檢察官及聲請人一均向臺灣高等法院提起上

訴，該院以 99 年度上訴字第 2192 號刑事判決撤銷原判決，改依 98 年 5 月 20 日修正公布之毒品危害防制條例（下稱 98 年毒品條例）第 4 條第 1 項及第 2 項之販賣第一級及第二級毒品罪論處，復經最高法院 100 年度台上字第 1633 號刑事判決以聲請人一之上訴不合法律上之程式為由而駁回確定，是其聲請應以上開臺灣高等法院刑事判決為確定終局判決（下稱確定終局判決一）。聲請人一主張確定終局判決一所實質援用之最高法院 25 年非字第 123 號刑事判例（下稱系爭判例一）要旨謂販賣毒品罪，並不以販入後復行賣出為構成要件，祇要以營利為目的，將毒品販入或賣出，有一於此，犯罪即經完成，而以販賣既遂罪論處，有牴觸憲法之疑義，向本院聲請解釋。

聲請人吳○明（下稱聲請人二）於 99 年間因毒品案件，先後經臺灣苗栗地方法院及臺灣高等法院臺中分院判決論處罪刑。嗣經最高法院撤銷原判決，並發回更審。經臺灣高等法院臺中分院 100 年度上更（一）字第 56 號刑事判決依 98 年毒品條例第 4 條第 1 項之販賣第一級毒品罪論處，復經最高法院 101 年度台上字第 3686 號刑事判決以聲請人二之上訴不合法律上之程式為由而駁回確定，是其聲請應以上開臺灣高等法院臺中分院更審判決為確定終局判決（下稱確定終局判決二）。聲請人二主張確定終局判決二所適用之最高法院 67 年台上字第 2500 號刑事判例（下稱系爭判例二）要旨謂販賣行為，不以販入之後復行賣出為要件，只要以營利為目的而購入或賣出，犯罪即為完成，有牴觸憲法之疑義，向本院聲請解釋。

聲請人鄭○家（下稱聲請人三）於 99 年間因毒品案件，先後經臺灣臺北地方法院及臺灣高等法院 99 年度上重訴字

第 67 號刑事判決，依 98 年毒品條例第 4 條第 1 項之販賣第一級毒品罪論處，復經最高法院 100 年度台上字第 1106 號刑事判決以聲請人三之上訴不合法律上之程式為由而駁回確定，是其聲請應以上開臺灣高等法院刑事判決為確定終局判決（下稱確定終局判決三）。聲請人三主張確定終局判決三所實質援用之系爭判例一有牴觸憲法之疑義，向本院聲請解釋。

聲請人謝○盛（下稱聲請人四）於 99 年間因毒品案件，先後經臺灣桃園地方法院及臺灣高等法院 100 年度上訴字第 3579 號刑事判決，依 98 年毒品條例第 4 條第 2 項、第 3 項及第 4 項之販賣第二級、第三級及第四級毒品罪論處，復經最高法院 101 年度台上字第 3439 號刑事判決以聲請人四之上訴不合法律上之程式為由而駁回確定，是其聲請應以上開臺灣高等法院刑事判決為確定終局判決（下稱確定終局判決四）。聲請人四主張確定終局判決四所實質援用之系爭判例一有牴觸憲法之疑義，向本院聲請解釋。

聲請人陳○明（下稱聲請人五）於 94 年間因毒品案件，先後經臺灣屏東地方法院及臺灣高等法院高雄分院 97 年度上訴字第 1104 號刑事判決，依 92 年 7 月 9 日修正公布之毒品危害防制條例（下稱 92 年毒品條例）第 4 條第 1 項之販賣第一級毒品罪論處，復經最高法院 99 年度台上字第 292 號刑事判決以聲請人五之上訴不合法律上之程式為由而駁回確定，是其聲請應以上開臺灣高等法院高雄分院刑事判決為確定終局判決（下稱確定終局判決五）。聲請人五主張確定終局判決五所適用之系爭判例二有牴觸憲法之疑義，向本院聲請解釋。

聲請人陳○廷（下稱聲請人六）於 94 年間因毒品案件，

先後經臺灣板橋地方法院及臺灣高等法院刑事判決，論處罪刑。嗣經最高法院撤銷原判決，並發回更審。臺灣高等法院更審判決，依 92 年毒品條例第 4 條第 1 項之販賣第一級毒品罪論處，復經最高法院 97 年度台上字第 1377 號刑事判決以聲請人六之上訴無理由而駁回確定，是其聲請應以上開最高法院刑事判決為確定終局判決（下稱確定終局判決六）。聲請人六主張確定終局判決六維持第二審法院認定其行為構成販賣毒品，適用之系爭判例二有牴觸憲法之疑義，向本院聲請解釋。

聲請人王○焱（下稱聲請人七）於 97 年間因毒品案件，先後經臺灣高雄地方法院及臺灣高等法院高雄分院刑事判決，論處罪刑。嗣經最高法院撤銷原審關於意圖販賣而持有第一級毒品部分之判決，並發回更審。臺灣高等法院高雄分院 98 年度上更（一）字第 121 號刑事判決改以 92 年毒品條例第 4 條第 1 項之販賣第一級毒品罪等論處，復經最高法院 99 年度台上字第 2400 號刑事判決以聲請人七之上訴不合法律上之程式為由而駁回確定，是其聲請應以上開臺灣高等法院高雄分院更審判決為確定終局判決（下稱確定終局判決七）。聲請人七主張確定終局判決七所實質援用之系爭判例一有牴觸憲法之疑義，向本院聲請解釋。

按確定終局裁判援用判例以為裁判之依據，而該判例經人民指摘為違憲者，應視同命令予以審查，迭經本院解釋在案（本院釋字第 154 號、第 271 號、第 374 號、第 569 號及第 582 號等解釋參照）。查確定終局判決二、五及六，適用系爭判例二；確定終局判決一、三、四及七就系爭判例一，雖均未明確援用，但由其所持法律見解判斷，應認皆已實質援用（本院釋字第 582 號、第 622 號、第 675 號、第 698 號、

第 703 號及第 771 號解釋參照）。次查，系爭判例一及二雖經最高法院於 101 年 8 月 7 日、8 月 21 日、11 月 6 日 101 年度第 6 次、第 7 次及第 10 次刑事庭會議以不合時宜為由，而決議不再援用，惟前開 7 件確定終局判決均作成於上述刑事庭會議之前，並分別適用或實質援用系爭判例一或二，而論處聲請人等觸犯 98 年或 92 年毒品條例第 4 條之販賣毒品既遂罪。是聲請人等之聲請，核與司法院大法官審理案件法（下稱大審法）第 5 條第 1 項第 2 款要件相符，均應受理。

又上述 7 件聲請案，分別涉及系爭判例一及二，爭點相同，爰予併案審理，作成本解釋，理由如下：

按刑罰法規涉及人民生命、人身自由及財產權之限制或剝奪，國家刑罰權之行使，應嚴格遵守憲法罪刑法定原則，行為之處罰，以行為時之法律有明文規定者為限，且法律所定之犯罪構成要件，須使一般受規範者得以理解，並具預見之可能性（本院釋字第 602 號解釋參照）。法院解釋適用刑事法律時，就犯罪構成要件不得擴張或增加法律規定所無之內容，而擴增可罰行為範圍。法院組織法 108 年 1 月 4 日修正公布，同年 7 月 4 日施行前，於違憲審查上，視同命令予以審查之刑事判例，尤應如此，否則即有悖於憲法罪刑法定原則。

查聲請人等行為時適用之 92 年及 98 年毒品條例第 4 條第 1 項至第 4 項，分別規定：「（第 1 項）……販賣第一級毒品者，處死刑或無期徒刑……。（第 2 項）……販賣第二級毒品者，處無期徒刑或 7 年以上有期徒刑……。（第 3 項）……販賣第三級毒品者，處 5 年以上有期徒刑……。（第 4 項）……販賣第四級毒品者，處 3 年以上 10 年以下有期徒刑……。」（本條文嗣後分別於 104 年 2 月 4 日、109 年 1

月 15 日兩度修正，惟僅加重處罰之刑度，構成要件均未修正。）

按刑罰規定之用語應以受規範者得以理解及可預見之標準解釋之，始符合刑法解釋之明確性要求，俾能避免恣意入人民於罪，而與憲法保障人民基本權之意旨相符。前開條文構成要件中所稱之「販賣」一詞，根據當前各版本辭典所載，或解為出售物品，或解為購入物品再轉售，無論何者，所謂販賣之核心意義均在出售，均非單指購入物品之行為。

再就毒品危害防制條例（下稱毒品條例）第 4 條本身之體系著眼，該條第 1 項至第 4 項將販賣毒品與製造、運輸毒品之構成要件併列，並對該三種犯罪態樣，科以相同之法定刑。由此推論，本條所指之「販賣」毒品行為嚴重程度，應與製造及運輸毒品相當。所謂製造毒品係將毒品從無至有，予以生產，進而得危害他人；而運輸毒品係從一地運至他地，使毒品流通於他地，產生危害。基於同一法理，販賣毒品罪，應在處罰「賣出」毒品，因而產生毒品危害之行為，蓋販賣須如此解釋，其嚴重程度始與上述製造與運輸毒品之危害相當。

次就毒品條例整體體系觀之，本條例第 5 條及第 14 條第 1 項及第 2 項分別定有「『意圖販賣而持有』毒品罪」、「『意圖販賣而持有』罌粟種子、古柯種子或大麻種子罪」，如該二條文所稱販賣一詞之理解得單指購入，勢必出現僅意圖購入即持有毒品之不合理解釋結果。基於同條例散見不同條文之同一用詞，應有同一內涵之體系解釋，益見毒品條例第 4 條所稱之販賣，非得單指購入之行為。

另本條例第 4 條第 6 項及第 5 條，分別定有「販賣毒品未遂罪」及「意圖販賣而持有毒品罪」；而就「單純購入而

持有」毒品之犯罪態樣，本條例於第 11 條亦定有「持有毒品罪」之相應規範。亦即，立法者於衡量不同態樣之毒品犯罪行為，及所欲維護法益之重要性、防止侵害之可能性及事後矯正行為人之必要性後，於本條例第 4 條第 1 項至第 4 項、第 6 項、第 5 條及第 11 條，將販賣毒品、持有毒品之行為，建構出「販賣毒品既遂」、「販賣毒品未遂」、「意圖販賣而持有毒品」及「持有毒品」四種不同犯罪態樣之體系，並依行為人對該等犯罪所應負責任之程度，定其處罰。是依據前開規定所建構之體系，毒品條例第 4 條第 1 項至第 4 項所定之「販賣毒品既遂」，解釋上，應指銷售賣出之行為已完成者而言，不包含單純「購入」毒品之情形。

又由歷史解釋之觀點而言，自現行毒品條例前身，即 44 年 6 月 3 日制定公布之戡亂時期肅清煙毒條例（下稱 44 年煙毒條例），就販賣、持有毒品之行為，即採區分「販賣毒品（或鴉片）」、「販賣毒品（或鴉片）未遂」、「意圖販賣而持有毒品（或鴉片）」及「持有毒品（或鴉片）」四類不同之罪名，並由重至輕訂定相應法定刑度之立法模式（44 年煙毒條例第 5 條、第 6 條、第 7 條及第 10 條參照）。該條例其後雖曾經 81 年 7 月 27 日修正公布名稱為肅清煙毒條例、87 年 5 月 20 日修正公布名稱為毒品危害防制條例及全文修正共 36 條，及多次細部修正，惟上述經 44 年煙毒條例所確立之區別販賣毒品及持有毒品犯罪態樣，迄今皆未有變動。足見從 44 年之後，立法者有意將販賣毒品及持有毒品之犯罪，予以細緻化區分，自始至終，均無意將單純「購入」毒品之行為，以「販賣毒品既遂」論處。

由是可知，不論依文義解釋、體系解釋及立法者之原意，毒品條例第 4 條第 1 項至第 4 項所定販賣毒品既遂罪，僅限

於「銷售賣出」之行為已完成，始足該當。如有悖於上開意旨，擴張或增加法律規定所無之內容，而擴增可罰行為範圍，即與憲法罪刑法定原則有違。

系爭判例一稱：「禁菸法上之販賣鴉片罪，並不以販入之後復行賣出為構成要件，但使以營利為目的將鴉片購入或將鴉片賣出，有一於此，其犯罪即經完成，均不得視為未遂。」系爭判例二亦稱：「所謂販賣行為，並不以販入之後復行賣出為要件，祇要以營利為目的，將禁藥購入或賣出，有一於此，其犯罪即為完成……屬犯罪既遂。」均認所謂販賣，祇要以營利為目的，而有購入之行為，即足構成。

惟毒品條例第 4 條第 1 項至第 4 項所定販賣毒品既遂罪，僅限於「銷售賣出」之行為已完成，始足該當，業如前述。系爭判例一及二，其中關於以營利為目的而一有「購入」毒品之行為，即該當販賣毒品既遂罪部分，與上開販賣意旨不符，於此範圍內，均有違憲法罪刑法定原則，牴觸憲法第 8 條及第 15 條保障人民人身自由、生命權及財產權之意旨。

聲請人就本解釋之原因案件，得依本解釋意旨，依法定程序請求救濟，併此指明。

大法官會議主席 大法官 許宗力

大法官 蔡烱燉 黃虹霞 吳陳鐶 蔡明誠

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