TREASURY DEPARTMENT TECHNICAL EXPLANATION OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND BARBADOS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT BRIDGETOWN ON DECEMBER 31, 1984

GENERAL EFFECTIVE DATE UNDER ARTICLE 28: 1 JANUARY 1984

INTRODUCTION

This is a technical explanation of the Convention between the United States and Barbados signed on December 31, 1984 ("the Convention"). This explanation is an official guide to the Convention. It reflects policies behind particular Convention provisions, as well as understandings reached with respect to the interpretation and application of the Convention.

TABLE OF ARTICLES

ARTICLE 1
General Scope

Article 1 identifies the persons who come within the scope of the Convention. Paragraph 1 provides that, in general, the Convention applies to persons who are residents of one or both of the Contracting States. The term "resident" is defined in Article 4 (Residence). The Convention may also apply to residents of third States. For example, paragraph 6 of Article 10 (Dividends) covers certain dividends derived by residents of third States and Article 26 (Exchange of Information) may apply to an exchange of information concerning residents of third States.

Paragraph 2 provides that the Convention shall not restrict any exclusion, exemption, deduction, credit or other allowance provided by the laws of either Contracting State or by any other agreement between the Contracting States. Thus, if a deduction would be allowed under the Internal Revenue Code of 1954 (“the Code”) for an item in computing the U.S. taxable income of a Barbadian resident, such deduction is generally available to such person in computing taxable income under the Convention. Paragraph 2 does not, however, authorize a taxpayer to make inconsistent choices between rules of the Code and rules of the Convention. Thus, if a taxpayer claims the benefits of a provision of the Convention, he must use the rules Convention relevant to such benefit and must use such rules consistently. In no event, however, are the rules of the Convention to increase U.S. tax liability from what that liability would be if there were no convention.

Paragraph 3 contains the traditional “saving clause” under which each Contracting State reserves the right to tax its residents, as determined under Article 4, as if the Convention had not come into effect. In the case of the United States, the "saving clause" applies to certain former citizens as well as to current citizens. Thus, a former U.S. citizen whose loss of citizenship had as one of its principle purposes the avoidance of tax will continue to be subject to U.S. income tax, in accordance with the provisions of section 877 of the Code, but only for a period of ten years following the loss of citizenship.

Paragraph 4 sets forth certain exceptions to the saving clause. These exceptions are, in general, necessary to assure that provisions of the Convention intended to reduce a resident's tax liability to his country of residence fulfill their intended objective. Subparagraph (a) provides that the saving clause does not affect the benefits provided under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 1b) and 4 of Article 18 (Pensions, Annuities, Alimony and Child Support) and Articles 23 (Relief from Double Taxation), 24 (Non-Discrimination) and 25 (Mutual Agreement Procedure). Thus, notwithstanding the saving clause, the benefits provided in these Articles are available to residents and citizens of a Contracting State.

Subparagraph (b) of paragraph 4 provides a second category of exceptions to the saving clause. Under this subparagraph, benefits of the enumerated articles are provided to persons who are residents of a Contracting State by the country of residence so long as they are not citizens of that State and do not have immigrant status in that State. This second category of exceptions includes benefits conferred under Articles 19 (Government Service), 20 (Students and

Apprentices) and 27 (Diplomatic Agents and Consular Officers). The term "immigrant status" refers to a person admitted to the United States as a permanent resident under U.S. immigration laws (i.e., holding a "green card").

ARTICLE 2
Taxes Covered

Paragraph 1 identifies the existing taxes to which the Convention applies. In the United States, these taxes are the Federal income taxes imposed by the Code, but excluding the accumulated earnings tax (Code section 531), except as provided in paragraph 5 of Article 10 (Dividends), the personal holding company tax (Code section 541) and social security taxes. Thus, this paragraph and paragraph 5 of Article 10 restrict the application of the accumulated earnings tax in the case of certain Barbadian companies manufacturing approved products in Barbados and certain companies controlled by residents of Barbados. (See the discussion of paragraph 5 of Article 10 below.) Paragraph 1 also covers the excise taxes on insurance premiums paid to foreign insurers and with respect to private foundations. The excise taxes on insurance premiums, however, are covered only to the extent that risks covered by the premiums are not reinsured with a person not entitled to relief from such taxes under this or any other U.S. Convention.

The Barbadian taxes covered are the Income Tax (including the premium income tax), the Corporation Tax (including the tax on branch profits) and the Petroleum Winning Operations Tax.

Paragraph 2 provides that the Convention shall also apply to any taxes imposed subsequent to December 31, 1984, which are identical or substantially similar to the taxes existing on that date and covered by the Convention. The competent authorities agree to notify each other of any significant changes in their respective tax laws and of any official published material relating to the application of the Convention including this technical explanation.

ARTICLE 3
General Definitions

Paragraph 1 defines the principal terms used in the Convention. Unless the context otherwise requires, a term defined in this paragraph has a uniform meaning throughout the Convention. A number of important terms are, however, defined in other Articles. For example, the terms "resident" and "permanent establishment" are defined in Articles 4 (Residence) and 5 (Permanent Establishment), respectively, and the terms “'dividends,” “interest,” and "royalties" are defined in Articles 10 (Dividends), 11 (Interest) and 12 (Royalties), respectively.

The term "United States" is defined to mean the United States of America and, when used in a geographical sense, includes the States and the District of Columbia, the U.S. territorial waters and any area beyond the territorial waters which, in accordance with international law and the laws of the United States, is an area within which the rights of the United States with respect

to the natural resources of the seabed and subsoil may be exercised. Puerto Rico, the Virgin Islands, Guam and any other U.S. possession or territory are not within the definition of the United States.

The term "Barbados" means the island of Barbados, including the territorial waters of Barbados and any area outside such territorial waters which in accordance with international law and the laws of Barbados is an area within which the rights of Barbados with respect to the natural resources of the seabed and subsoil may be exercised.

The term "person" is defined to include an individual, an estate, a trust, a company, a partnership and any other body of persons. The term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes.

The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean an enterprise earned on by a resident, as defined by Article 4, of the United States or Barbados, as the context requires.

The term "competent authority" is defined to mean, in the case of the United States, the Secretary of the Treasury or his delegate. In the case of Barbados, the term means the Minister of Finance and Planning or his authorized representative.

A "national" of the United States is defined as a citizen of the United States as well as any company, association or other entity deriving its status as such from the laws of the United States, or of any political subdivision. A "national" of Barbados is defined as a citizen of Barbados and any company, association, or other entity deriving its status as such from the laws of Barbados. The term "national" is used in Articles 19 (Government Service), 24 (Non-Discrimination) and 25 (Mutual Agreement Procedure).

The term international traffic" means any transport by a ship or aircraft except where such transport is solely between places in the other Contracting State. Thus, for example, coastal shipping along the Atlantic coast of the United States is not international traffic. However, if a ship operated by a resident of Barbados transports goods from Canada to the United States, leaving some of the goods in New York and the remainder in Norfolk, the entire transport would be international traffic. The definition of international traffic is relevant for purposes of Article 8 (Shipping and Air Transport).

Paragraph 2 provides that in the case of a term not defined in the Convention the domestic tax law of the Contracting State applying to the Convention shall control, unless the context in which the term is used requires a definition independent of domestic tax law or the competent authorities reach agreement on a meaning pursuant to Article 25 (Mutual Agreement Procedure). The term “context” refers to the purpose and background of the provisions in which the term appears.

Pursuant to the provisions of Article 25, the competent authorities of the Contracting States may resolve by mutual agreement any difficulties or doubts as to the interpretation or application of the Convention, including the meaning of a term. An agreement by the competent

authorities with respect to the meaning of a term used in the Convention would supersede conflicting meanings in the domestic laws of the Contracting States.

ARTICLE 4
Residence

This Article sets forth rules for determining the residence of individuals, companies, and other persons for purposes of the Convention. Article 4 is important because, except as otherwise provided, only a resident of a Contracting State may claim benefits under the Convention. A determination of residence under this Article applies for all other provisions of the Convention. In general, the determination of residence begins with a person's liability to tax as a resident under the respective taxation laws of the Contracting States. Thus, a person who, under those laws, is a resident of one, and only one, Contracting State need look no further. However, the Convention definition is also designed to assign residence to one State or the other for purposes of the Convention in circumstances where a person is a resident of both Contracting States under their respective laws. The Convention definition is, of course, exclusively for purposes of the Convention.

The term "resident of Barbados" is defined as a company (as defined in paragraph 1(b) of Article 3 (General Definitions) whose business is managed and controlled in Barbados and any other person (except a company) resident in Barbados for purposes of its tax.

Similarly, the term "resident of the United States" is defined as a person (except a company) resident in the United States for purposes of its tax. This includes a resident alien individual, who is subject to tax by the United States on his worldwide income, or an alien present in the United States who makes an election under Code section 6013(g) or (h), as well as a resident U.S. citizen. The term also includes a company which is created or organized under the laws of the United States or a political subdivision thereof.

An individual is not automatically a resident of the United States or Barbados for the purposes of this Convention if he is a citizen of either State. To be a resident of a Contracting State for purposes of the Convention, he must be subject to tax in that State on account of his residence therein. Thus, an individual will be considered to be a U.S. resident if, without regard to his citizenship, he would be taxable by the United States on his worldwide income as a resident. Residence of a U.S. citizen for this purpose is to be determined in accordance with the principles of Treasury regulations under section 871 of the Internal Revenue Code as in effect prior to enactment of section 7701(b) in the Tax Reform Act of 1984. Whether a non-U.S. citizen is a resident of the United States for this purpose is to be determined under section 7701(b).

Paragraph 1 of this Article also provides that a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income derived by such person is subject to tax by such Contracting State as the income of a resident. For example, under current United States law, a partnership is never, and an estate or trust is often not, taxed as such. Thus, under the Convention, a partnership, estate, or trust will be treated as a resident of the United States only to the extent that income derived by such partnership, estate, or trust is subject to tax by the United

States as the income of a U.S. resident. Similarly, if a resident of Barbados and a resident of a third State form a partnership, and the partnership derives dividends from the United States, the limitation of U.S. tax under the provisions of Article 10 (Dividends) applies only to the share of dividends attributable to the partner resident in Barbados. However, the fact that a charitable organization or pension fund is generally exempt from tax by the Contracting State in which it is organized is not to be construed to deny such entity's status as a resident of that State under the Convention.

Paragraph 2 provides a series of tie-breaking rules for assigning residence to an individual who under paragraph 1 is a resident of both Contracting States. The first test depends upon where the individual has a permanent home available. If this test is inconclusive because the individual has a permanent home in both States, he is considered in resident of the State which is the center of his vital interests; i.e., the State, with which his personal and economic relations are closer. If such a center cannot be determined, or if he does not have a permanent home available to him in either State, residence is where the individual has an habitual abode. If he has an habitual abode in both States or in neither of them, he is deemed to be a resident of the State of which he is a national. Should the individual be a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question of residence by mutual agreement under the authority of Article 25 (Mutual Agreement Procedure).

Paragraph 3 provides that a company which under paragraph 1 is a resident of both Contracting States (i.e., it is incorporated in the United States and has its place of effective management in Barbados) shall be considered to be a resident of the Contracting State under whose laws (or the laws of a political subdivision of that State) it was created.

Paragraph 4 provides that if under paragraph 1 a person, other than an individual or a company, is a resident of both Contracting States, the competent authorities shall agree on a single residence for such person and on how the Convention applies to such person. This provision applies to persons such as partnerships, trusts and estates.

ARTICLE 5
Permanent Establishment

This Article defines the term “permanent establishment,” which is relevant particularly to the taxation of business profits under Article 7 (Business Profits). Paragraph 1 defines the term "permanent establishment" as a regular place of business through which the business of an enterprise is wholly or partly carried on. No difference in meaning is intended between the use of the term "regular place of business" in the Convention and the more commonly used term "fixed place of business".

Paragraph 2 provides an illustrative list of regular places of business or activities which constitute a permanent establishment. The list includes: a place of management; a branch; an office; a factory; a workshop; a store or premises used as a sales outlet; a warehouse, in relation to a person providing storage facilities for others; and a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. The term “'place of management”' is used in the

OECD Model Income Tax Convention. Since a place of management would in most cases require an office, which is specifically listed in paragraph 2, the insertion of "place of management" will generally not cause a regular place of business to be a permanent establishment if it would not otherwise be a permanent establishment. The reference to premises used as a "sales outlet" does not mean that premises used by an enterprise for the mere delivery of goods is a permanent establishment; additional significant activity by the enterprise at the premises, Such as the negotiation of sales, is necessary for the premises to constitute a "sales outlet" and a permanent establishment of the enterprise.

Paragraph 2(i) provides that a building or construction, assembly or installation, or a drilling rig or ship used for the exploration or development of natural resources within a Contracting State constitutes a permanent establishment, but only if the project or activity continues within that State for one or more periods totaling 183 days in a 12-month period. The time spent on supervisory activities connected with the project or activity included in determining whether the 183 day test has been met. For a permanent establishment to exist in any one year, however, the site, project, or activity must continue for at least 30 days in that year. If a construction project lasts for 190 days in total, 20 days in one year and 170 in the next, the project will constitute a permanent establishment, because it exceeds 183 days in the aggregate, though no permanent establishment will be deemed to exist during the first year. A series of contracts or projects which are interdependent both commercially and geographically is to be treated as a single project for the purpose of applying the 183-day test.

Paragraph 2(j) provides that a dredging project, such as deepening a port, constitutes a permanent establishment if the project continues for a period or periods aggregating more than 120 days in a 12-month period. However, as with a construction project, no permanent establishment will be deemed to exist in any year in which the dredging project exists for less than 30 days.

Paragraph 2(k) provides that the furnishing of services, including consultancy, management, technical and supervisory services, within a Contracting State by an enterprise through employees or other personnel constitutes a permanent establishment but only if; the activities continue within that State for a period or periods aggregating more than 90 days in any 12-month period (and for 30 days or more in the taxable year); or, the services are performed within that State for an associated enterprise. Whether an enterprise is an "associated enterprise" for this purpose is determined under the rules of Article 9 (Associated Enterprises).

Paragraph 2(l) provides that the maintenance of substantial equipment or machinery within a Contracting State constitutes a permanent establishment, but only if such equipment or machinery is maintained within that State for a period exceeding 120 consecutive days (and for 30 days or more in the taxable year).

Paragraph 3 overrides paragraphs 1 and 2 to provide that a regular place of business may be used for one or more of the following activities and not be a permanent establishment;

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise, other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery, other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet;

(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 regular place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a regular place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

The reference in subparagraph (e) to advertising, scientific research and supply of information is not intended to suggest that such activities are always auxiliary or that other activities cannot be auxiliary.

Paragraph 4 provides that if an enterprise of a Contracting State does not have a permanent establishment in the other Contracting State under paragraphs 1, 2 and 3, but goods or merchandise are either subjected to processing in that other Contracting State by another person (whether or not purchased in that other Contracting State), or are purchased in that other Contracting State (and such goods or merchandise are not subject to processing outside that other Contracting State), then such enterprise shall be considered to have a permanent establishment in that other Contracting State to the extent that all or part of such goods or merchandise is sold by or on behalf of such enterprise for use, consumption, or disposition in that other Contracting State.

Paragraphs 5 and 6 describe the permanent establishment implications of employees and agents. Under paragraph 5 a person (other than an agent of an independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State of that enterprise if:

(a) he habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to those listed in paragraph 3 and are not described in paragraph 4; or,

(b) he habitually maintains in that State a stock of goods or merchandise from which he regularly delivers goods on behalf of the enterprise and additional activities conducted in that State on behalf of the enterprise have contributed to the conclusion of the sale of such goods or merchandise.

Thus, if a U.S. company that does not have a regular place of business in Barbados hires a person who does not have the power to conclude contracts on behalf of the company but who during a taxable year participates materially in Barbados in the negotiation of contracts for the sale of goods on behalf of the company to residents of Barbados, and regularly delivers such goods in Barbados to the purchasers on behalf of the company, the person is considered to be a permanent establishment of the U.S. company if he habitually maintains in Barbados a stock of goods from which he makes the deliveries.

Paragraph 6 provides that if an enterprise of one Contracting State merely carries on business in the other Contracting State through a broker or any other agent of independent status acting in the ordinary course of his business, the enterprise will not thereby be considered to have a permanent establishment in that other State. Paragraph 6 also provides, however, that such broker or agent will not be considered independent, and paragraph 6 shall not apply, if all his activities are devoted wholly, or almost wholly, on behalf of that enterprise and the transactions between the two are not conducted under arm's-length conditions.

Paragraph 7 provides that the fact that a company which is a resident of one Contracting State either controls or is controlled by a company which is a resident of the other Contracting State, or which is a resident of any State and carries on business in that other State, does not automatically render either company a permanent establishment of the other.

ARTICLE 6
Income from Real Property (Immovable Property)

Paragraph 1 of this Article provides that income derived by a resident of a Contracting State from real property, including income from agriculture and forestry, may be taxed in the other Contracting State if the property is situated in that other State. This right to tax does not depend on whether the income is derived through a permanent establishment in that other State. Also, the Convention does not limit the amount of tax imposed by the other Contracting State on the real property income. Income derived from real property includes income from rights such as an overriding royalty or a net profits interest in a natural resource. Income in the form of rights to explore for or exploit natural resources which a person receives as compensation for services (e.g., exploration services) is, however, subject to the provisions of Article 7 (Business Profits), 14 (Independent Personal Services) or 15 (Dependent Personal Services), as the case may be, rather than the provisions of this Article.

Paragraph 2 defines real property as having the meaning it has under the laws of the Contracting State in which the property is situated.

Paragraph 3 provides that the basic rule in paragraph 1 applies to income derived from the direct use, letting, or any other use of real property.

Paragraph 4 provides that the rules of this Article apply to the income from immovable property of an enterprise or from property used for the performance of independent personal services.

Paragraph 5 of the U.S. Model, which provides a binding election to be taxed on a net basis, was omitted from the Convention; such an election is available under both U.S. and Barbadian domestic law.

ARTICLE 7
Business Profits

This Article provides rules for the taxation by a Contracting State of income from business activity carried on in that State by a resident of the other Contracting State.

Paragraph 1 provides that the business profits, as defined in paragraph 7, of an enterprise of a Contracting State shall be taxable only by that State unless the enterprise carries on business in the other Contracting State through a permanent establishment there. The term "permanent establishment" is defined in Article 5 (Permanent Establishment). If the enterprise does have a permanent establishment in the other Contracting State, that State may tax that portion of the enterprise's business profits which is attributable either to the permanent establishment itself, or to sales in that other State of goods or merchandise of the same or similar kind as those sold through the permanent establishment, or to other business activities carried on in that other State which are the same as or similar to the activities affected through the permanent establishment. Though this rule (which is taken from the U.N. Model Convention) gives the State in which the permanent establishment is situated a broader taxing right over the business profits of an enterprise of the other State than under the U.S. of OECD Model Conventions, it is narrower than the limited "force of attraction" rule of Code section 864(c)(3).

Paragraph 2 provides that the profits to be attributed to the permanent establishment itself are those which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions. The term profits "attributable to" a permanent establishment means that, subject to the rules described above, the limited "force-of-attraction" rule of Code section 864(c)(3) does not apply for U.S. tax purposes under the Convention. Profits may, however, be from sources within or without a Contracting State and be "attributable to" a permanent establishment. Thus, items of income described in section 864(c)(4)(B) of the Code which are attributable to a permanent establishment in the United States are subject to tax by the United States.

Paragraph 3 provides that there shall be allowed as deductions those expenses incurred for the purposes of the permanent establishment, whether incurred in the State where the permanent establishment is located or elsewhere. Deductible expenses include a reasonable allocation to the permanent establishment of administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise.

Paragraph 4 provides that the mere purchase by a permanent establishment of goods or merchandise for the enterprise shall not result in profits being attributed to the permanent establishment.

Paragraph 5 is taken from the OECD Model and was included in the Convention at the request of Barbados. It provides that, in cases where it has been customary in a Contracting State to d so, that State may compute the profit attributable to a permanent establishment by apportioning the total profits of the single enterprise of which the permanent establishment is a part to its various parts, including the permanent establishment. The attribution of profits to the permanent establishment, however, must be consistent with the principle of the Article, i.e., the profits so apportioned must be consistent with the profits which would be attributed to the permanent establishment under the separate entity, arm's-length approach prescribed by

paragraph 2 of the Article.

Paragraph 6 provides that the same method for determining the profits attributable to a permanent establishment shall be used each year unless there is good and sufficient reason to change. In the United States, such a change may be a change of accounting method requiring the approval of the Internal Revenue Service.

Paragraph 7 provides that where business profits include items of income dealt with separately in other Articles of the Convention, then the provisions of those separate Articles override the provisions of Article 7. Thus, for example, the taxation of income from international shipping and transport dealt within Article 8 (Shipping and Air Transport) is governed by that Article and not by Article 7. Similarly the taxation of dividends, interest, and royalties is controlled by Articles 10 (Dividends), 11 (Interest), and 12 (Royalties); however, those Articles provide that where dividends, interest, or royalties derived by a resident of a Contracting State are attributable to a permanent establishment or regular base of that resident in the other Contracting State, then the provisions of this Article, or Article 14 (Independent Personal Services), shall apply.

Paragraph 8 provides a definition of "business profits." Such profits are defined to mean income derived from the conduct of any trade or business, including the rental of tangible personal property. Thus, as a general matter, income from the rental of such property derived by a resident of one Contracting State may not be taxed by the other Contracting State except to the extent attributable to a permanent establishment in the latter State. Note that under paragraph 2(l) of Article 5 (Permanent Establishment), a permanent establishment will exist in a State if substantial equipment or machinery is maintained there for more than 120 consecutive days, and, for a permanent establishment to exist in any taxable year, the property must be maintained in the State for 30 days or more in that year.

ARTICLE 8
Shipping and Air Transport

Paragraph 1 provides that profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only by that Contracting State. International traffic is defined in paragraph 1(g) of Article 3 (General Definitions). As indicated in the discussion of paragraph 7 of Article 7 (Business Profits), this Article takes precedence over the rules of Article 7. Thus, the other Contracting State may not tax such profits even if they are attributable to a permanent establishment of the enterprise in that other State.

Paragraph 2 clarifies what income is to be considered profits from the operation of ships or aircraft. Paragraph 2 states that income from the operation of ships or aircraft in international traffic includes profits from the rental of ships or aircraft if operated in international traffic by the lessee, or if such rental profits are incidental to operating profits. Such "incidental" rental profits may include rents from bareboat charters.

Paragraph 3 states that profits of an enterprise of a Contracting State from the use,

maintenance or rental of containers, and related equipment for the transport of containers, used for the transport of goods or merchandise in international traffic are taxable only by the Contracting State in which the enterprise is resident.

Paragraph 4 provides that the provisions of paragraphs 1 and 3 apply to profits from the participation in a pool, a joint business, or an international operating agency.

ARTICLE 9
Associated Enterprises

This Article complements section 482 of the Code and confirms the right of the United States to allocate items of income, deduction, credit, or allowance in certain cases. Under paragraph 1, if conditions are made or imposed between related enterprises in their commercial or financial relations which differ from those that would be made between independent enterprises, any profits that would, but for these 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. Enterprises are related for purposes of the Convention where an enterprise of a Contracting State participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State, or the same persons participate directly or indirectly in the management, control, or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State.

Paragraph 2 describes the consequences of an adjustment made by a Contracting State in accordance with paragraph 1. The other Contracting State will make an appropriate adjustment to the amount of tax which it charged to the related enterprise, and in determining the amount of such adjustment, the other provisions of the Treaty shall be taken into account. Thus, if as a result of the adjustment one enterprise is treated as having made a distribution of profits to the other, the provisions of Article 10 (Dividends) may apply to the deemed distribution. If necessary, the competent authorities are authorized to consult to resolve any differences in the application of these provisions, such as a disagreement over the appropriateness of an adjustment.

Paragraph 3 provides that the provisions of paragraph 1 shall not limit the application of any internal law provisions in either Contracting State designed to place transactions between related enterprises on an arm's-length basis. Thus, this Article does not limit the right of the United States to apply section 482 of the Code, even when such application extends beyond the provisions of Article 9.

ARTICLE 10
Dividends

Under paragraph 1, dividends paid by a company which is a resident of a Contracting State to a shareholder resident in the other Contracting State may be taxed by that other State. Such dividends may also be taxed by the State of which the company paying the dividends is a

resident, but such tax may not be in excess of the rates specified in paragraph 2: 5 percent of the dividends, where the beneficial owner is a company which owns, directly or indirectly, at least 10 percent of the voting stock of the company paying the dividends, and 15 percent of the dividends in all other cases.

Paragraph 2 does not affect the taxation of the company's profits out of which the dividends are paid.

Paragraph 3 defines "dividends", for the purposes of Article 10, as income from shares or other rights (not debt-claims) participating in profits, and income from other corporate rights taxed in the same way as income from shares under the tax law of the State of which the company making the distribution is a resident.

Paragraph 4 provides that where dividends otherwise taxable at source at 5 or 15 percent as provided in paragraph 2 are attributable to a permanent establishment or regular base of the beneficial owner in the Contracting State of which the company paying the dividends is a resident, then the dividends are taxable by that State in accordance with the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), rather than under the provisions of paragraph 2 of this Article. The term 'regular base' is used in the Convention at the request of Barbados in lieu of the more commonly used term fixed base." No difference in meaning is intended.

Paragraph 5 provides that the income of a Barbadian company derived from manufacture in Barbados of approved products under the tax incentive legislation of Barbados shall not be subject to the United States accumulated earnings tax. Generally, these companies are incorporated in Barbados to manufacture approved products in Barbados and to participate in a "pioneering activity." Such companies are subject to a reduced corporate profits tax by Barbados. Paragraph 5 also provides that any company which is a resident of Barbados shall be exempt from United States accumulated earnings tax if individuals (other than U.S. citizens) who are residents of Barbados control, directly or indirectly, throughout the last half of the taxable year more than 50 percent of the entire voting power in that company.

Paragraph 6 provides, as a general rule, that a Contracting State may not impose tax on dividends paid by a company which is a resident of the other Contracting State. There are three exceptions to this rule:

(1) where dividends are paid to a resident of the first-mentioned State,

(2) where the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or regular base in the first State, or

(3) where dividends are paid out of profits attributable to one or more permanent establishments of the paying company in the first State, provided that the company's gross income attributable to such permanent establishments constituted at least 50 percent of that company's gross income from all sources.

Where only the third of these three conditions applies, if the dividends are beneficially owned by a resident of the other Contracting State, the tax which may be imposed on such dividends is subject to the limitations provided in paragraph 2 of this Article.

For example, if a company which is a resident of Barbados is doing business in the United States and pays dividends, those dividends may be taxed by the United States:

(1) if paid to a resident of the United States;

(2) if the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a regular base in the United States; or

(3) if the dividends are paid out of profits attributable to a permanent establishment of the Barbados company in the United States so long as at least 50 percent of the company's gross income from all sources as attributable to that permanent establishment.

The last case preserves the United Sates tax on dividends paid by a foreign corporation which are considered to have a U.S. source under section 86l(a)(2)(B) of the Code. If beneficially owned by a resident of Barbados, such dividends would be subject to U.S. tax at the reduced rates provided in paragraph 2(a).

It is to be noted that this Article is subject to the provisions of the saving clause of paragraph 3 of Article 1 (General Scope), so that the United States may tax a U.S. citizen on dividend income in all cases. In the case of dividends paid by a company resident in a third State, see Article 21 (Other Income).

ARTICLE 11
Interest

This Article concerns the taxation by a Contracting State of interest sourced in that State and derived and beneficially owned by a resident of the other Contracting State.

Paragraph 1 provides that, in general, the Contracting State in which the interest arises may tax the interest, but the tax may not exceed 12.5 percent of the gross amount of the interest. The paragraph also provides an exception to the general rule. Pursuant to this exception, interest is exempt from tax by the Contracting State in which it has its source if it is derived and beneficially owned by a resident of the other Contracting State with respect to debt obligations guaranteed or insured by that other State or by a political subdivision, local authority or instrumentality thereof. It is understood that the Government of a Contracting State or any political subdivision, local authority or instrumentality of that State is to be treated as a resident of that State.

Paragraph 2 contains a definition of interest which is essentially the same as that found in the U.S. Model. No difference in meaning is intended by the use of the term "loan" in the Convention in place of the term "debt-claim" in the U.S. Model.

Paragraph 3 provides that interest attributable to a permanent establishment or regular base which the beneficial owner of the interest, being a resident of a Contracting State, maintains in the other Contracting State is taxable in accordance with the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, rather than under this Article.

If an excessive amount of interest is paid by reason of a special relationship between the payer and beneficial owner of interest, or between both of them and a third person, then, pursuant to paragraph 5, the provisions of Article 12 shall only apply to the portion of the payment which would have been agreed upon in the absence of such special relationship. The excess amount may be taxed by each Contracting State, in accordance with its own law, including the Convention where applicable. In the case of the United States, the excess amount may, for example, be taxed as a dividend, in which case the provisions of Article 10 (Dividends) may apply.

Note that Article 11 does not contain a source rule for interest. Each country, therefore, applies its internal law rules to determine the source of an interest payment. The Article, therefore, does not preclude the application by the United States of tax on, for example, interest paid to a beneficial owner resident in Barbados by a company resident in Barbados or a third State if the requirements of the Code for the imposition of such tax are satisfied. The United States tax on such interest beneficially owned by a Barbadian resident is limited by paragraph 1 to 12.5 percent.

This Article is subject to the saving clause of paragraph 3 of Article 1 (General Scope). Therefore, interest derived by a U.S. citizen who is a resident of Barbados may be taxed by the United States without regard to this Article.

ARTICLE 12
Royalties

Paragraph 1 provides that royalties arising in a Contracting State which are paid to a resident of the other Contracting State may be taxed by that other State.

Paragraph 2 provides that the State in which the royalty arises may also tax a royalty paid to a beneficial owner who is a resident of the other State, but the tax may not exceed 12.5 percent of the royalty.

Paragraph 3 contains a definition of royalties. This definition is similar to that in the U.S. Model, but it treats as royalties payments received as consideration for the use of motion pictures, or films, tapes or other means of reproduction used for radio or television. The term "royalties" does not encompass management fees, which are covered by the provisions of Article 7 (Business Profits) or 14 (Independent Personal Services), or payments under a bona fide cost-sharing arrangement.

Paragraph 4 provides that royalties attributable to a permanent establishment or regular base which the beneficial owner of the royalties being a resident of a Contracting State maintains in the other Contracting State are taxable in accordance with the provisions of Article 7 or Article 14, as the case may be, rather than under this Article.

If an excessive amount of royalty by reason of a special relationship between the payer

and the beneficial owner of the royalty, or between both of them and a third person, then pursuant to paragraph 5 the provisions of Article 12 shall only apply to the portion of the payment which would have been agreed upon in the absence of the special relationship. The excess amount may be taxed by each Contracting State, in accordance with its own law, including the Convention where applicable. In the case of the United States, the excess amount may, for example, be taxed as a dividend, in which case the provisions of Article 10 (Dividends) may apply.

Paragraph 6 identifies the State in which royalties are deemed to arise. The general rule is that royalties arise in a Contracting State when the payer is that State itself, a political subdivision or local authority, or a resident of that State. Payments for the use of or the right to use property or rights in a Contracting State are deemed, however, to arise in the State in which they are used. This rule reflects the U.S. statutory rule, which sources royalties in the State in which the property or rights are used. Thus, if a U.S. resident licensor receives royalties from a resident of Barbados for the use of a patent in Barbados or in a third State the royalty will be deemed to arise in Barbados. If, however, the Barbadian resident uses the patent in the United Sates, the royalty will be deemed to arise in the United States. These rules are relevant for purposes of calculating the U.S. foreign tax credit for Barbadian income taxes as well as for purposes of this Article. See paragraphs 1 and 3 of Article 23 (Relief from Double Taxation).

This Article is subject to the saving clause of paragraph 3 of Article 1 (General Scope). Therefore, royalties derived by a U.S. citizen who is a resident of Barbados may be taxed by the United States without regard to this Article.

ARTICLE 13
Gains

Paragraph 1 states the rule that gains derived from the alienation of real property situated in a Contracting State may be taxed by that State.

Paragraph 2 defines real property situated in each of the Contracting States. In the case of the United States, the term “real property situated in the other Contracting State” includes real property (as described in Article 6) situated in the United States and a United States real property interest as defined under the Foreign Investment in Real Property Tax Act, as amended. Thus, the United States retains its full taxing right under the law. In the case of Barbados, paragraph 2(b) provides that real property situated in Barbados has the meaning it has under Barbadian law and includes real property referred to in Article 6 which is situated in Barbados, as well as an interest in a company, partnership, trust or estate, the assets of which consist wholly or principally of real property situated in Barbados.

Paragraph 3 provides that a Contracting State may tax gains from the alienation of personal property which are attributable to a permanent establishment or to a regular base in that State which belongs to a resident of the other Contracting State.

Paragraph 4 provides that gains derived by an enterprise of a Contracting State from the

alienation of ships, aircraft, or containers operated in international traffic shall be taxable only in that State (i.e., the State of residence).

Paragraph 5 notes that those gains which are included within the definition of royalties in paragraph 3 of Article 12 (Royalties) are taxable in accordance with Article 12 and not this Article.

Paragraph 6 provides that alienation of any property not referred to in the preceding paragraphs of the Article shall be taxable only in the Contracting State of which the alienator is resident.

The term "gains" includes gains taxed as capital gains and as ordinary income.

The Article is subject to the saving clause of paragraph 3 of Article 1 (General Scope).

ARTICLE 14
Independent Personal Services

This Article concerns the taxation of income from the performance of independent personal services. Independent personal services are, in general terms, services performed by an individual for his own account where he receives the income and bears the losses arising from the services. Generally, services rendered by persons such as physicians, lawyers, engineers, architects, dentists and accountants as sole proprietors or partners are independent personal services, whereas services performed as an employee or as an officer of, for example, a company constitute dependent personal services, which are dealt within Article 15.

Paragraph 1 of this Article provides that income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall generally not be taxable in the other Contracting State. However, such income may also be taxed in the other Contracting State if such services are performed in that other State and either: the income is attributable to a regular base in that other State which the individual has regularly available for the purpose for performing his activities; the individual is present in that other State for 90 days or more in the taxable year; or, net income derived by the individual from residents of that other State exceeds $5,000 (or its equivalent in Barbadian currency) during the taxable year. In the third case, if the net income exceeds $5,000, the entire amount may be taxed by the other State.

The term "regular base" is not defined but, in general, is intended to be the same as a permanent establishment. The term also has the same meaning as the term "fixed base" used in many other treaties.

This Article is subject to the saving clause of paragraph 3 of Article 1 (General Scope). Thus, for example, a U.S. citizen who is resident in Barbados is subject to U.S. tax on his total income regardless of the provisions of this Article.

ARTICLE 15
Dependent Personal Services

This Article generally provides that, subject to the provisions relating to directors' fees (Article 16), pensions and annuities (Article 18) and government services (Article 19), remuneration derived by a resident of a Contracting State in respect of an employment may be taxed only by that State unless and to the extent that such remuneration is for employment exercised in the other Contracting State, in which case the latter State may also tax such remuneration. Even if the employment is exercised in the other Contracting State, however, such remuneration is taxable only in the person's State of residence if four conditions are met:

(1) his remuneration in the taxable year from such employment in the other State is not more than $5,000 (or its equivalent in Barbadian currency);

(2) he is present in the other State for not more than 183 days in the calendar year;

(3) he is paid by, or on behalf of, an employer who is not a resident of the other State; and

(4) the remuneration is not deductible in computing taxable income of a permanent establishment or regular base of the employer in the other State.

Paragraph 3 provides a special rule for remuneration derived by members of the regular complement of ships or aircraft operated in international traffic. Such remuneration is taxable only by the Contracting State of which the employee is resident.

This Article is subject to the provisions of the saving clause of paragraph 3 of Article 1 (General Scope).

ARTICLE 16
Directors' Fees

This Article provides that a resident of a Contracting State who derives fees for services performed in the other Contracting State as a director of a company resident in that other State may be taxed by that other State on such fees.

ARTICLE 17
Artistes and Athletes

This Article deals with the taxation of income derived by a resident of a Contracting State as an entertainer, musician or athlete from the performance of services as such in a Contracting State.

Paragraph 1 overrides the provisions of Article 14 (Independent Personal Services) and Article 15 (Dependent Personal Services) to allow the other State to tax such income, where the latter Articles would not permit such taxation, but only if the gross receipts for such services, not including expenses reimbursed to the artiste or athlete or borne on his behalf, exceeds $250 (or its equivalent in Barbadian currency) per day of performance or $4,000 (or its equivalent in

Barbadian currency) in the taxable year. If such gross receipts exceed $250 per day or $4,000 per year, the full amount, not just the excess, is subject to tax by the Contracting State in which the services are performed. Income derived from services rendered by persons such as producers, directors and technicians and others who are not artistes or athletes is taxable in accordance with the provisions of Article 14 or Article 15, as the case may be.

Paragraph 2 deals with cases in which income in respect of the activities of an entertainer or athlete accrues to a person other than, or in addition to, the entertainer or athlete; e.g., where the entertainer performs services as an employee of, or a contractor for, a corporation or other person. Paragraph 2 provides that income in respect of the personal activities of an artiste or athlete which accrues to the benefit of another person, including a company, trust, or partnership, may, notwithstanding the provisions of Articles 7 (Business Profits), 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete take place. Thus, such other person could not claim the permanent establishment protection otherwise provided by Article 7. For purposes of paragraph 2, income is considered not to accrue to another person if it is established that neither the artiste or athlete, nor any persons related to him, participates directly or indirectly in the profits of such other person in any manner, including the receipt of deferred compensation, bonuses, fees, dividends, partnership distributions, or other distributions. A person may be considered related to the artiste or athlete regardless of whether the person is considered to be related to him under the provisions of Article 9 (Associated Enterprises). Paragraph 2 does not affect the rule of paragraph 1 that applies to the entertainer or athlete himself.

Paragraph 3 provides three exceptions to the rules in the preceding paragraphs of the Article. The preceding rules do not apply

(1) where the visit by an entertainer or athlete is substantially supported by public funds of the Contracting State of residence of the entertainer or athlete, including any political subdivision, local authority or statutory body of that State;

(2) where the person providing the services of the athlete or entertainer is a non-profit organization, and no part of the organization's income inures to the benefit of any other person (other than the remuneration to the athlete or entertainer); and

(3) where the entertainer or athlete is providing his services to such a non-profit organization. The taxation of any income in respect of the services of an entertainer or athlete in circumstances where paragraph 3 applies is governed by Articles 14 and 15.

This Article is subject to the saving clause of paragraph 3 of Article 1 (General Scope).

ARTICLE 18
Pensions, Annuities, Alimony and Child Support

Article 18 provides rules concerning the taxation of pensions, social security payments, annuities, alimony, and child support.

Paragraph 1 provides that, in general, pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment

shall be taxable only by the State. Social security payments and other public pensions paid by a Contracting State to a resident of the other Contracting State (or to a citizen of the Unite States resident in any State) are taxable only by the Contracting State making the payments. However, the taxation of pensions in respect of services rendered to Contracting State is governed by the provisions of Article 19 (Government Service).

Paragraph 2 provides that annuities beneficially derived by a resident of the Contracting State are taxable only in that State. The term annuities is defined to mean a stated sum paid periodically a stated times during a specified number of years, under an obligation to make the payments in return for adequate and full consideration, other than services rendered.

Paragraph 3 provides that alimony paid to a resident of a Contracting State is taxable only by that State. The term "alimony" is defined as periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident. Thus, if a U.S. resident makes periodic payments pursuant to a written separation agreement to a resident of Barbados and such amounts are taxable to the Barbados resident under the laws of Barbados such alimony is exempt from U.S. tax. If the amounts are not taxable to the Barbadian recipient under the laws of Barbados then U.S. tax may be imposed at statutory rates.

Paragraph 4 provides that periodic payments for the support of a minor child made pursuant to a written separation agreement or decree of divorce, separate maintenance, or compulsory support, paid by a resident of one Contracting State to a resident of the other Contracting State is taxable only by the State of residence of the payor.

Paragraphs 1(a), 2 and 3 of this Article are subject to the saving clause of paragraph 3 of Article 1 (General Scope). Thus, for example, a private pension or an annuity paid to a resident of Barbados who is a U.S. citizen would be taxable by the United States regardless of the provisions of the Article. Paragraphs 1(b) and 4 of this Article, however, are, by virtue of paragraph 4(a) of Article 1, not subject to the saving clause. The rules of those paragraphs, therefore, apply regardless of the citizenship of the income recipient.

ARTICLE 19
Government Service

This Article provides that wages, salaries and similar remuneration, including pensions, paid to a citizen of a Contracting State out of the public funds of that Contracting State or a political subdivision or local authority of that State will be exempt from tax by the other Contracting State if the payment is for services rendered by the citizen in the discharge of governmental functions.

Payments to employees of a Contracting State who are not citizens of that Contracting State, and payments for services which are not in the discharge of governmental functions or are rendered in connection with a business carried on by that State, political subdivision or local authority, are, as appropriate, dealt within the other Articles of the Convention dealing with the

taxation of income from personal services. For example, a resident of the United States who is not a United States citizen and who is employed in the United States Embassy in Barbados, will be subject to the provisions of Article 15 (Dependent Personal Services) in the determination of his tax liability, if any, to Barbados. The taxation of his pension by Barbados in respect of his United States Government service will be determined under the provisions of Article 18 (Pensions, Annuities, Alimony and Child Support).

The provisions of this Article are not subject to the saving clause of paragraph 3 of Article 1 (General Scope) in respect of an individual who is neither a citizen nor a resident with immigrant status in the Contracting State in which the services are performed. In other cases the clause does apply. Thus, if a citizen of Barbados is employed in the Barbadian Embassy in Washington, and that individual is also a citizen of the United States or has immigrant status in the United States (i.e., he holds a green card), the United States may tax the salary of that individual without regard to this Article. If, however, he is neither a citizen of the United States, nor has immigrant status there, the provisions of this Article will be applicable.

Whether functions are of a governmental nature is determined by reference to the concept of a governmental function in the State in which the income arises.

ARTICLE 20
Students and Apprentices

Paragraph 1 provides that a resident of one of the States who goes to the other Contracting State for the purpose of full-time education or training shall be exempt from tax by that other Contracting State on payments made to him from sources outside that State for the purpose of his maintenance, education or training.

Paragraph 2 provides that a student or trainee to whom paragraph 1 would otherwise apply may elect to be treated for tax purposes as a resident of the State which he is visiting for the purposes of his education or training. Under this rule, a Barbadian resident who comes to the United States as a student or apprentice may elect to be taxed on his worldwide income by the United States and to claim the same deductions and personal exemptions which are available to U.S. residents. He would be considered a resident of the United States for purposes of this Convention. Such an election would benefit a student or apprentice with limited income, principally from U.S. sources, especially if he is supporting dependents, since a nonresident alien is only allowed one personal exemption. The election would presumably not be made by a student or apprentice with large amounts of foreign source income, because if he so elects, his foreign source income would become subject to U.S. tax. Once the election is made, it may not be revoked during the time the person qualifies for treatment under paragraph 1, except with the consent of the competent authority of the host State.

The benefits conferred by the host State under this Article are not subject to the saving clause in paragraph 3 of Article 1 (General Scope), with respect to individuals who are neither citizens of nor have immigrant status in that State. In other cases, the saving clause does apply.

ARTICLE 21
Other Income

This Article provides in paragraph 1 that, in general, any income of a resident of a Contracting State which is not dealt within the foregoing Articles of the Convention, such as prizes and awards, shall be taxable only by that State. This rule is not confined to income from the other Contracting State, but applies, as well, to income arising in third States.

Paragraph 2 excepts from the rule of paragraph 1 income derived by a resident of a Contracting State which is attributable to a permanent establishment or fixed base of that resident in the other Contracting State (other than income from real property as the term is defined in paragraph 2 of Article 6). In such a case, the income is covered instead under the Articles dealing with business profits (Article 7), or independent personal services (Article 14). Thus, for example, income of a U.S. resident which arises in a third State (other than income from real property in a third State) and which is attributable to a permanent establishment of such person in Barbados would be subject to tax by Barbados.

Paragraph 3 provides that, notwithstanding paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt within the foregoing Articles of the Convention and arising in the other Contracting State may be taxed by that other State.

This Article is subject to the saving clause of paragraph 3 of Article 1 (General Scope). Thus, for example, if a U.S. citizen who is resident in Barbados derives income from a third State, the United States may tax that income notwithstanding the rule in paragraph 1 which gives Barbados exclusive taxing rights over such income of its residents.

ARTICLE 22
Limitations on Benefits

Article 22 assures that source basis tax benefits granted by a Contracting State pursuant to the Convention go to the intended beneficiaries-the residents of the other Contracting State-and not to residents of third States not having a substantial business and tax nexus with the other Contracting State. In the absence of Article 22, residents of a third State might organize a company in a Contracting State for the purpose of, for example, claiming preferential source basis tax rates in the other Contracting State.

Paragraph 1 provides the general rule, subject to the exceptions in paragraphs 2 and 3, that a resident of a Contracting State which derives income from the other Contracting State is not entitled to the relief from taxation in the source State provided by Articles 6 through 23 of the Convention if either of two conditions are present:

(1) Treaty benefits will not be granted if 50 percent or less of the beneficial interest in the resident is owned, directly or indirectly, by any combination of individual residents of the United States or Barbados or U.S. citizens. In the case of a company, fifty percent

or less of the beneficial interest in a company means 50 percent or less of the number of shares in each class of the company's shares.

(2) Treaty benefits will also not be granted if the income of the resident is used in substantial part, directly or indirectly, to meet liabilities to persons who are residents of third States who are not citizens of the United States. The term “liabilities” refers to deductible payments, which includes liabilities for interest (including accrued interest on original issue discount obligations if deductible under Barbados law) and royalties. The term "substantial" is not defined. Deductible payments which are less than 50 percent of the relevant income, however, will not generally be considered substantial, although in appropriate circumstances a lower percent of income will be considered substantial.

Paragraph 2 contains the first of two general exceptions to the denial of benefits under paragraph 1. Even if either of the conditions in paragraph 1 are present, treaty benefits will be granted by the source State if the income in respect of which benefits are claimed is derived in connection with, or is incidental to, the active conduct by the person deriving the income of a trade or business in the other State. However, this exception does not apply (and, thus, benefits will be denied) under certain circumstances. It does not apply if the business conducted in that other States is the business of making or managing investments. It also does not apply, in general, if the business is one of banking or insurance, and the income is subject to tax in the State of residence of the person deriving it at a rate substantially below the rate generally applicable to business income in that State (such as the rate applicable to Barbadian offshore banks and insurance companies). If, however, such a bank derives income from activities which are other than "traditional" banking activities, treaty benefits may be claimed (if the test of paragraph 2 is satisfied) with respect to income from the "non-traditional" activities, regardless of the provisions of paragraph 1. Traditional banking activities include taking deposits, making loans, managing investments and performing trust or other services as a fiduciary.

The effect of paragraph 2 on the right to U.S. treaty benefits of entities in the "off-shore" sector in Barbados is as follows: International Business Companies which are investment companies that are denied treaty benefits under paragraphs 1 and 3 may not claim treaty benefits. If an International Business Company is engaged in other commercial activities it may receive benefits if it meets the tests of the first sentence of paragraph 2. Off-shore banks that are denied treaty benefits under paragraphs 1 and 3 may not receive benefits with respect to income from traditional banking activities, but they may be entitled to treaty benefits with respect to income from other types of activities, such as non-banking commercial services. Off-shore insurance companies that are denied treaty benefits under paragraphs 1 and 3 are not entitled to treaty benefits.

Paragraph 3 contains a second exception to the general denial of benefits rules of paragraph 1. A company which is a resident of a Contracting State and which would not be entitled to benefits under paragraph 1, would, under paragraph 3, be entitled to benefits, if there is substantial and regular trading in its principal class of shares on a recognized stock exchange. A recognized stock exchange is defined to mean:

(1) the NASDAQ System, owned by the National Association of Securities Dealers, Inc.;

(2) any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934; and

(3) any other stock exchange which the competent authorities may agree is a recognized exchange.

Paragraph 4 provides for competent authority consultation with respect to the denial of benefits in any particular case if the competent authority of the State of residence of the person which has been denied benefits so requests. This paragraph does not require prior agreement of the competent authorities before benefits may be denied.

This Article is not intended to impose any added burden on United States withholding agents, and withholding agents will not be required to verify a person's ownership or purposes. In applying this Article, the normal burden of proof rules apply. In claiming U.S. benefits, a resident of Barbados would follow the normal U.S. procedures, in effect at the time, for claiming reduced rates of tax or exemption under U.S. tax treaties. The Internal Revenue Service, of course, retains the right to consider, on audit, whether any particular grant of benefits was appropriate.

ARTICLE 23
Relief from Double Taxation

Paragraph 1 provides that the United States shall give a foreign tax credit for the appropriate amount of income taxes paid or accrued to Barbados. Paragraph 1 provides a credit both for Barbadian taxes imposed on a recipient of income arising in Barbados and in the case of U.S. company owning at least 10 percent of the voting stock of a company resident in Barbados from which the U.S. company receives dividends in the taxable year, the appropriate amount of Barbadian taxes paid or accrued by the Barbadian company with respect to the profits out of which it paid dividends. In this regard, the Barbadian taxes referred to paragraphs 1(b) and 2 of Article 2 (Taxes Covered) are considered to be income taxes for purposes of paragraph 1.

The amount of credit granted under the Convention for Barbadian taxes subject to the limitations provided United States law for the taxable year the purposes of limiting the credit to U.S. tax on income from sources outside of the United States (see, for example Code section 904(g)).

Paragraph 2 provides that, subject the provisions and limitations of Barbadian law regarding the allowance of foreign tax credits, Barbados will allow to a resident of Barbados as a credit against Barbadian tax on income the appropriate amount of income tax paid or accrued to the United States, in the case of dividends from a United States company Barbadian company which owns at least 10 percent of the voting stock of U.S. company, Barbados will also allow a credit for the appropriate amount of United States tax imposed with respect to the profits out of which dividends paid. The U.S. taxes referred to in paragraph 1(a) and 2 of Article 2 are considered to be income taxes for purpose applying the Barbadian credit in relation to U.S. taxes.

Paragraph 3 sets forth the source of income rules generally applicable purposes of allowing relief under this Article. For purposes of the U.S. and Barbadian credits under paragraphs 1 and income derived by a resident of a Contracting State which may be taxed in the

other State in accordance with the Convention (other than by reason of citizenship under the saving clause of paragraph 3 of Article 1 (General Scope)) shall be deemed to arise from sources within that other Contracting State. Income derived by a resident of a Contracting State which may not be taxed in the other Contracting State in accordance with the Convention is deemed to arise, for purposes of paragraphs 1 and 2, in the first-mentioned State.

The saving clause in paragraph 3 of Article 1 does not apply to this Article. Thus, the provisions of this Article may be relied upon by a citizen or resident of a Contracting State.

ARTICLE 24
Non-Discrimination

Paragraph 1 provides that nationals of a Contracting State (including both individuals and companies) shall not be treated less favorably with respect to taxation and connected requirements by the other Contracting State than are nationals of that other Contracting State in the tame circumstances. This provision applies to a national of a Contracting State, whether or not that person is a resident of either Contracting State. A national of the United States who is subject to U.S. tax on his worldwide income is not in the same circumstances as a national of Barbados who is not resident in Barbados and is, therefore, not subject to Barbadian tax on his worldwide income. Thus, the United States is not obliged to treat a national of Barbados who is a resident of a third State in the same manner as a United States national who is a resident of that third State.

Paragraph 2 provides that a Contracting State may not impose more burdensome taxes on a permanent establishment in that State of an enterprise of the other Contracting State than the first-mentioned State imposes on its own enterprises carrying on the same activities. The paragraph clarifies that the basic rule of paragraph 2 is not to be construed as obliging Contracting State to grant to a resident of the other Contracting State any personal allowances, reliefs, and tax reductions on account of civil status or family responsibilities which it grants to its own residents.

There are several exceptions provided in the paragraph to the prohibition against discrimination with respect to permanent establishments. The paragraph does not prevent Barbados from imposing its branch profits tax, nor would the United States be prevented from imposing an additional tax on branch profits, should such a tax be introduced in the United States in the future. Similarly, the Barbados tax on the premium income of nonresident insurers or foreign insurance companies may be imposed at statutory rates without violating paragraph 2.

Paragraph 3 prohibits discrimination in the matter of deductions. Interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State must be deductible disbursements for determining taxable profits in the first-mentioned State under the same conditions as if they had been paid to a resident of the first-mentioned State. Exceptions to this rule arise where the provisions of paragraph 1 of Article 9 (Associated Enterprise) paragraph 6 of Article 11 (Interest) or paragraph 5 of Article 12 (Royalties) apply. The term “other disbursements” includes a reasonable allocation of executive

and general administrative expenses, research and development expenses, and other expenses incurred for the benefit of a group of related enterprises.

Paragraph 4 requires that a Contracting State not impose more burdensome taxation on an enterprise of that State owned by residents of the other Contracting State than the first-mentioned State imposes on other similar enterprises of that State.

Paragraph 5 confirms that Article 24 applies to the taxes of the Contracting States which are identified in Article 2 (Taxes Covered) as the taxes to which the Convention applies.

The provisions of this Article do not override the right of the United States to impose the tax provided in Code section 897 (relating to gains derived by nonresident aliens or foreign corporations from U.S. real property interests). However, a Barbados corporation holding a U.S. real property interest is entitled to make the election under Code section 897(I) to be treated as a U.S. corporation.

The saving clause in paragraph 3 of Article 1 (General Scope) does not apply to Article 24.

ARTICLE 25
Mutual Agreement Procedure

Paragraph 1 provides that a person who considers that the actions of one or both of the Contracting States result, or will result, for him in taxation not in accordance with the Convention, may present his case to the competent authority of the State of which the person is a resident, or to the State of which he is a national if his case comes under paragraph 1 of Article 24 (Non-Discrimination), which deals with discrimination against nationals of a Contracting State by the other Contracting State. The person need not first have exhausted the remedies available to him in the domestic laws of the Contracting States.

Paragraph 2 provides that the competent authority, if it considers the objection to be justified, and if it is not able to arrive at a satisfactory solution itself, shall endeavor to resolve the case by mutual agreement with the competent authority of the other Contracting State in order to avoid taxation not in accordance with the Convention. Any agreement so reached shall be implemented without regard to any statutory time limits or other procedural limitations of the Contracting States. Thus, if it is agreed that a taxpayer's liability should be adjusted downward, a refund of the excess tax paid will be made even if the statute of limitations of the State called upon to make the refund may have expired. This waiver of the statute of limitations applies only for refunds and not for the imposition of additional taxes.

Paragraph 3 provides that the competent authorities shall endeavor by mutual agreement to resolve any difficulties or doubts which may arise as to the interpretation or application of the Convention. They may also consult together to eliminate double taxation in cases not specifically provided for in the Convention. The competent authorities may, for example, agree to:

(a) the attribution of income, deductions, credits, or allowances of an enterprise of

a Contracting State to its permanent establishment in the other Contracting State;

(b) the allocation of income, deductions, credits, or allowances between persons;

(c) the characterization of items of income;

(d) the application of source rules;

(e) the meaning of a term;

(f) increase any dollar amounts specified in the Convention, to reflect monetary or economic developments; and

(g) the application of domestic law provisions regarding penalties, fines and interest.

Thus, the competent authorities may agree to a common method of treating an issue in the interest of avoiding double taxation by the two Contracting States.

Paragraph 4 provides that the competent authorities may communicate with each other directly for the purpose of reaching agreement in accordance with Article 25.

ARTICLE 26
Exchange of Information

Paragraph 1 provides that the competent authorities shall exchange such information as is necessary for carrying out the provisions of the Convention or of the domestic laws concerning taxes covered by the Convention. Paragraph 1 clarifies that the competent authorities may also exchange such information as is necessary to prevent fraud or tax evasion in respect of taxes covered by the Convention. Paragraph 1 requires that information so exchanged will be protected in the same manner as information obtained under domestic laws with respect to secrecy and disclosure. The use of such information is limited to those persons involved in the assessment, collection, or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, taxes covered in the Convention. The Article confirms U.S. policy that information exchanged under these provisions may not be disclosed to any third jurisdiction without permission of the country from which the information is received. Information may be exchanged pursuant to paragraph 1 with respect to persons who are not residents of either Contracting State.

The provisions of paragraph 1 authorize the U.S. competent authority to allow access to information to persons involved in the administration of taxes covered in the Convention. Such persons include legislative bodies involved in the administration of taxes and their agents, such as, for example, the General Accounting Office, when GAO is engaged in a study of the administration of U.S. tax laws pursuant to a directive of Congress. The secrecy requirements of paragraph 1 must, however be met.

Paragraph 2 provides that the State to which a request has been made shall provide information in specified forms to be admissible in judicial proceedings of the requesting State. The specified forms include authenticated copies of unedited original documents, but only to the extent that such forms of information can be obtained under the laws and practices of the State with respect to its own taxes.

Paragraph 2 also obligates a Contracting State to endeavor to obtain information in response to a request as though the tax of the requesting State were being imposed by the requested State. Thus, information must be provided even if it does not relate to a tax liability in the requested State.

Paragraph 3 explains that paragraphs 1 and 2 do not obligate the United States or Barbados to carry out measures contrary to the laws and administrative practice of either State; to supply information not obtainable under the laws or in the normal course of the administration of either State; or to supply information which would disclose trade secrets or qt her information the disclosure of which would be contrary to public policy. Thus, Article 26 allows, but does not obligate, the United States and Barbados to obtain and provide information the disclosure of which would not be available to the requesting State under its laws or administrative practice or that in different circumstances would not be available to the State requested to provide information.

Paragraph 4 specifies the taxes in respect of which information may be exchanged. In the case of Barbados, these are the taxes covered by the Convention under paragraphs l(b) and 2 of Article 2 (Taxes Covered). For the United States, the Article applies to federal income taxes, federal taxes on self-employment income, federal taxes on transfers to avoid income taxes, federal estate and gift taxes and federal excise taxes.

The exchange of information provisions of the Convention complement the executive agreement to exchange tax information entered into with Barbados on November 3, 1984, under the authority of the Caribbean Basin Economic Recovery Act of 1983. That agreement will remain in force after the entry into force of this Convention.

ARTICLE 27
Diplomatic Agents and Consular Officers

This Article provides that this Convention shall not affect taxation privileges of diplomatic or consular officials under the rules of special agreements or international law.

ARTICLE 28
Entry into Force

Paragraph 1 provides that the Convention be ratified by the Contracting States, in accordance with their applicable procedures, and that the instruments of ratification be exchanged as soon as possible.

Paragraph 2 provides that the Convention will enter into force upon the exchange of instruments of ratification. Once the Convention enters into force it shall have effect:

(a) in the United States, in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month following the date on which the

Convention enters into force, and in respect of other taxes, for taxable years beginning on or after January 1, 1984; and

(b) in Barbados, for income and corporation tax for the income year beginning on or after January 1, 1984, for the petroleum winning operations tax for any accounting year beginning on or after January 1, 1984, and for the branch profits tax and the tax on the premium income of insurance companies for the income year beginning January 1, 1984.

ARTICLE 29
Termination

The Convention shall remain in force unless terminated by one of the Contracting States. Either Contracting State may terminate the Convention by giving notice on or before June 30 of any year after 1988 to the other Contracting State. In that event, the Convention shall cease to have effect:

(a) in the United States, in respect of tax withheld at the source, to amounts paid or credited on or after the first of January following the year in which notice of termination is given (e.g., if notice is given by June 30 of 1989, the termination will be effective on January 1, 1990), and in respect of other taxes, to taxable periods beginning on or after the first day of January of the year following that in which notice is given; and

(b) in Barbados, for the income year beginning on or after January 1 of the year following that in which notice is given with respect to the income tax, the corporation tax, the tax on branch profits and the tax on the premium income of insurance companies, and for any accounting period beginning on or after January 1 of the year following that in which notice is given with respect to the Petroleum Winning Operations Tax.

July 30, 1985