ARTICLE 32. TERMINATION

The Convention will continue in effect indefinitely, but may be terminated by either State at any time after the year 1973. A State seeking to terminate the Convention must give notice at least 6 months before the end of the calendar year through diplomatic channels.

If the Convention is terminated, such termination will be effective:

In the case of Finland to taxes which are levied for taxable years beginning on or after January 1 of the year in which notice is given;

In the case of the United States:

(1) as respects withholding taxes, on January 1 of the year following the year in which notice is given;

(2) as respects other income taxes, for any taxable year beginning on or after January 1 of the year following the year in which notice is given.

However, upon prior notice to be given through diplomatic channels, the provisions of Article 25 (Social Security Payments) may be terminated by either State at any time after this Convention enters into force.

OCTOBER 6, 1970.

TECHNICAL EXPLANATION OF PROPOSED U.S.-TRINIDAD AND TOBAGO INCOME TAX CONVENTION, SIGNED JANUARY 9, 1970

(Department of the Treasury)

ARTICLE 1. TAXES COVERED

This Article designates the taxes of the respective States which are the subject of the proposed Convention. With respect to the United States, the taxes included are the United States Federal income taxes imposed by the Internal Revenue Code. This includes, for example, the surtax and would also include such taxes as the temporary surcharge which was in force from 1968 to 1970. However, the Convention is not intended to apply to taxes which are in the nature of a penalty such as the taxes imposed under section 531 (accumulated earnings tax) and section 541 (personal holding company tax) of the Internal Revenue Code. These two taxes were expressly excluded to avoid uncertainty as to their status.

With respect to Trinidad and Tobago, the taxes included are the corporation tax and the income tax.

Pursuant to paragraph (2) of this Article the proposed Convention would also apply to taxes substantially similar to those enumerated which are imposed, in addition to or in place of the existing income taxes, after the date of signature of this Convention (January 9, 1970).

For purposes of Article 6 (Nondiscrimination) the Convention applies to taxes of every kind which are, or may be, imposed by the respective States, at the national, State, or local level.

ARTICLE 2. GENERAL DEFINITIONS

This Article sets out definitions of certain of the basic terms used in the proposed Convention and sets forth rules for determining fiscal domicile or residence for purposes of the proposed Convention. A number of important terms, however, are defined elsewhere in the Convention.

Any term used in this Convention which is not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of the State which is imposing the tax. The proposed Convention also provides a procedure under which a common definition may be arrived at by the competent authorities of the United States and Trinidad and Tobago, in order to prevent double taxation or further any other purpose of this Convention, if the definition of such term under the respective internal laws of the States differs or if the term is not readily definable under the laws of one or both of the States. The common meaning is to be arrived at by means of the mutual agreement procedure which is described in Article 23 (Mutual Agreement Procedures) of the proposed Convention. While treaties in the past did not specify the power of the competent authorities to resolve such differences in definitions, this power is nevertheless inherent in the authority set forth in the mutual agreement articles of these treaties to resolve "difficulties or doubts."

This Article defines geographical Trinidad and Tobago and geographical United States to include their respective continental shelves. The addition of a definition of the continental shelf is intended to clarify what the Contracting States consider to be included within their respective jurisdictions to tax. The United States continental shelf is defined as the seabed and subsoil of the adjacent submarine areas beyond the territorial sea over which the United States exercises exclusive rights in accordance with international law for the purpose of exploration and exploitation of the natural resources of such area, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation. For example, the income earned by a ship and its employees engaged in taking seismograph soundings on the United States continental shelf will be treated for tax purposes the same as the income from a comparable activity on the land of one of the States of the United States. A comparable definition is used in the case of Trinidad and Tobago. The definition of the continental shelf in the case of the United States only includes the continental shelf surrounding the 50 States. Thus, for example, the continental shelf surrounding Puerto Rico is not included. If the Treaty were extended beyond the 50 States and the District of Columbia (see Article 29—Extension of Convention) the continental shelf of the extended areas could also be covered. While the territorial sea is part of the United States and Trinidad and Tobago for all purposes, the defined continental shelf is only part of the United States or Trinidad and Tobago, as the case may be, in limited situations. It is included only to the extent that a person or property or activity to which the Convention is being applied is connected with exploration or exploitation of the continental shelf. The phrase "connected with" does not require physical attachment to the continental shelf to be within the scope of the definition.

This Article also sets forth rules for determining residence for purposes of the proposed Convention. Residence is important because, in general, only a resident of the Contracting States may qualify for the benefits of the Convention.

A resident of one of the Contracting States is a corporation of that State (as defined in this Article) or any person (other than a corporation) who is a resident of that State for purposes of its tax. Specifically in the case of the United States the term "a resident of the United States" means a United States corporation and any person (except a corporation or any other entity treated as a corporation for United States tax purposes) resident in the United States for purposes of its tax. The parenthetical language in the definition of a resident of the United States is intended to make clear that a foreign corporation, or other entity treated as a foreign corporation for United States tax purposes, which is a resident of the United States for certain purposes of its income tax law is not, under the Convention, a resident of the United States. A similar rule was needed in the case of Trinidad and Tobago.

In the case of the United States, the definition provides that a partnership, estate, or trust is treated as a resident only to the extent that the income derived by such person is subject to United States tax as the income of a resident. This language, although different from the Income Tax Convention between the United States and France, signed July 28, 1967, is intended to achieve the same result. Under United States law, a partnership is never, and an estate or trust is often not, taxed as such. Under the proposed Convention, in the case of the United States, income received by a partnership, estate, or trust will not qualify for the benefits of the Convention unless such income is subject to tax in the United States. Thus, in effect, the status of income which is subject to tax only in the hands of the partners or beneficiaries will be determined by the residence of such partners or beneficiaries. With respect to income taxed in the hands of the estate or trust, the residence of the estate or trust is determinative. This provision is reciprocal because of the presence of a similar problem under Trinidad and Tobago law.

Unlike our other conventions, the proposed Convention with Trinidad and Tobago does not provide a mechanism for determining a single residence for individuals who are treated by each State as being respectively resident therein. In addition, corporations could be treated by both States as being resident therein under the definitions set forth in the treaty. Dual residency in the case of corporations is a relatively easy situation for them to avoid.

This Article also provides that the terms "paid," "distributed," and "received" when applied to income shall include amounts which are "credited." This provision, which has not appeared in previous income tax conventions to which

the United States is a party, is intended to make clear that a dividend paid by a Trinidad and Tobago corporation includes an amount credited by such corporation.

ARTICLE 3. GENERAL RULES OF TAXATION

The general rules of taxation applicable under the proposed Convention are as follows:

A resident of one State may be taxed by the other State only on income from sources within that other State (including industrial or commercial profits attributable to a permanent establishment located in that other State), subject to the limitations set forth in this Convention. The jurisdictional rules of the proposed Convention parallel those set forth in section 872(a) of the United States Internal Revenue Code, relating to nonresident alien individuals, and section 882(b), relating to foreign corporations engaged in trade or business in the United States, as amended by the Foreign Investors Tax Act of 1966.

The proposed Convention contains the general rule (also found in our new French Convention) that the Convention does not effect in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of a State in the determination of a tax imposed by that State, or by any other agreement between the States. Even though the OECD Model Convention does not contain a comparable provision, this rule reflects the well-established principle that the Convention will not have the effect of increasing the tax burden on residents of the signatory countries. This rule represents the position of the United States under all conventions to which it is a party except that, to the extent a convention specifically provides, it may be necessary to waive certain rights as a condition to claiming more advantageous treaty benefits.

The proposed Convention also contains the traditional savings clause under which the United States reserves the right to tax its citizens and residents as if the Convention had not come into effect. However, the savings clause does not apply in several cases in which its application would contravene policies reflected in the Convention. Thus, the savings clause does not affect the provisions with respect to the foreign tax credit, nondiscrimination, or tax deferral for technical assistance. Although the provisions dealing with the mutual agreement procedure are not specifically excepted from the savings clause, agreements made by the competent authorities may nevertheless inure to the benefit of a citizen or resident of the United States or a resdient of Trinidad and Tobago. Moreover, the savings clause will not deny the benefits of the Convention to governmental employees or teachers or students unless such individuals are citizens of the United States or have immigrant status in the United States. The OECD Model Convention does not contain a savings clause because it is oriented toward the residence principle of taxation.

This Article also provides that any income from sources within a State to which the Convention is not expressly applicable will be taxable by that State in accordance with its own law. For example, because income from prizes or awards is not covered by the Convention, such income will be taxed in accordance with the internal law of the State from which such income is derived. The OECD Model Convention differs on this point and provides that income which is not expressly mentioned will be taxable only in the State of residence. In any event it should be noted that the proposed Convention specifically covers most types of income.

Another general rule of taxation is that subject to the provisions of paragraph (4) a State may tax a resident of that State whether or not that person is also a resident of the other State.

ARTICLE 4. RELIEF FROM DOUBLE TAXATION

Under the existing Convention, the United States provides relief from double taxation by allowing a credit for Trinidad and Tobago tax subject to the provisions of the law of the United States.

The proposed Convention employs the same method of avoiding double taxation in providing that subject to the provisions of United States law in effect for the taxable year (which do not affect the general principle of the Article) credit will be allowed to a United States citizen or resident for Trinidad and Tobago tax paid but not in excess of the portion of United States tax which net income from Trinidad and Tobago sources bears to total net income. Except for the spe-

cial source rules provided by the Convention, this provision does not add to the rights that a United States citizen or resident has to the foreign tax credit, including his right under current law to elect the overall limitation, but is for the purpose of giving treaty recognition to such rights. Modifications in United States law after the effective date of the Convention which concern the foreign tax credit will be applicable with respect to Trinidad and Tobago source income if such modifications do not contravene the general principles of the Convention.

With respect to the treatment of dividends which are received by a United States corporation from a corporation resident in Trinidad and Tobago in which such United States corporation owns at least 10 percent of the voting power, the proposed Convention differs in one respect from the provisions which would be applicable to such dividend under the Internal Revenue Code. The proposed Convention provides that in the case of such a dividend such United States corporation must include in gross income the amount of Trinidad and Tobago tax which the Trinidad and Tobago corporation paid on the profits out of which such dividend is paid and which the recipient corporation is "deemed" to have paid. Thus, the dividend must be grossed up. Under the Internal Revenue Code, however, a dividend does not have to be grossed up in order for the recipient United States corporation to claim a deemed paid credit, if the dividend is paid by a less developed country corporation and most Trinidad and Tobago corporations will be considered less developed country corporations. Inasmuch as the computation of the deemed paid tax credit without gross-up under the Internal Revenue Code will often produce a more favorable result than the gross-up computation under the proposed Convention, it may be to the advantage of United States corporations in some cases to use the Code rules in computing the deemed paid credit. Of course, in these cases United States corporations may continue to use the Code rules rather than those found in the proposed Convention. In a case where the taxpayer follows the Code rules on gross-up, it may nevertheless use the source rules set forth in Article 5 of the proposed Convention.

The proposed Convention provides that Trinidad and Tobago will allow its residents a credit for the amount of income taxes paid to the United States. In the case of a Trinidad and Tobago corporation which receives a dividend from a United States corporation in which such recipient corporation controls, directly or indirectly, at least 10 percent of the voting power, such corporation will be allowed a credit against its Trinidad and Tobago tax for the amount of the United States tax paid on the corporate profits out of which such dividend is paid. This credit is, of course, in addition to the credit allowed for the taxes paid to the United States by the Trinidad and Tobago corporation. Under the internal law of Trinidad and Tobago the indirect credit would be allowed only if the recipient corporation owned at least 25 percent of the voting stock in the payor United States corporation. The foreign tax credit Trinidad and Tobago will allow is subject to a per-country limitation.

ARTICLE 5. SOURCE OF INCOME

This Article sets forth in a single provision all of the various rules which are to be applied to determine the source of the different kinds of income covered by the treaty: dividends, interest, royalties, income from real property, including gains derived from the sale of such property, and compensation for personal services. These rules affect the application of Article 3 (General Rules of Taxation) and Article 4 (Relief from Double Taxation).

The source of any kind of income not covered by the treaty shall be determined under the internal law of the two States. In the case of different source rules applicable to an item of income the competent authorities of the two States under the mutual agreement procedure may establish a common source for the item of income.

Dividends paid by a corporation of one State are treated as from sources within that State and dividends paid by any other corporation are treated as from sources outside that State. However, dividends paid by a Trinidad and Tobago corporation shall be treated as income from sources within the United States if, for the 3-year period ending with the close of its taxable year preceding the declaration of such dividend (or for such portion of that period as the corporation has been in existence), such corporation (a) had a permanent establishment in the United States, and (b) derived 50 percent or more of its gross income from the industrial or commercial profits effectively connected with

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the industrial or commercial activity engaged in through such permanent establishment. The provision was included to offset a provision in Trinidad and Tobago law which imposed a withholding tax on remitted profits of a United States permanent establishment in Trinidad and Tobago. However, the amount of the dividend to be treated as from United States sources under this provision is not to exceed an amount which bears the same ratio to the entire dividend as the gross income of the corporation for such period which is effectively connected with the commercial or industrial activity engaged in through such permanent establishment within the United States bears to its gross income from all sources. A further limitation is that in no case shall the amount of such dividend which is treated as income from sources within the United States exceed the net amount of money or money's worth transferred from such permanent establishment during such period. This rule as applied to dividends paid by a Trinidad and Tobago corporation conforms to United States statutory law except that, under section 861(a)(2)(B) of the Internal Revenue Code, there is no limitation regarding the net amount of money or money's worth transferred. This limitation which is similar to a provision in the laws of Trinidad and Tobago is intended to insure that the United States will not treat dividends paid by a Trinidad and Tobago corporation as income from United States sources to the extent the profits of a permanent establishment which such corporation maintains in the United States are retained and reinvested.

Interest paid by that State, including any local government within such State, or by a resident of such State is treated as from sources within that State. Interest paid by any other person will be treated as from sources outside that State. However, interest paid by a resident of any State with a permanent establishment in any other State, directly or indirectly, out of the funds of such permanent establishment will be treated as income from sources within the State where such permanent establishment is located. The rules set forth above in the first two sentences correspond generally to the Internal Revenue Code provision dealing with interest (other than interest on deposit with persons carrying on the banking business). The exception to this general rule, set forth above in the third sentence, is not contained in the Internal Revenue Code but is substantially similar to the same rule in the United States-Belgian Income Tax Convention signed July 9, 1970.

Royalties paid for the use of, or the right to use, property described in paragraph (4) of Article 14 (Royalties) in a State are treated as income from sources within that State.

Income from real property and royalty income from the operation of mines, quarries, or other natural resources are to be treated as income from sources within the State in which such property is located.

Income from the rental of tangible personal property is to be treated as income from sources within the State in which such property is located when rented. Notwithstanding some minor differences in terms compared with like provisions in recent treaties, this language is intended to reflect the rule of the Internal Revenue Code and recent treaties that the source of such rental income is the State in which the property is located during the period of the lease.

Compensation received by an individual for his performance of personal services and income received by a person from the furnishing of personal services of another are to be treated as income from sources within the State in which such services are performed. If services are performed partly within and patly outside any State, income from the performance or furnishing of such services shall be treated as income from sources partly within and partly outside that State. Compensation for personal services, and private pensions and annuities paid in respect of such services, performed aboard ships or aircraft operated in international traffic by a resident of a State and, in the case of the United States, registered in the United States, provided the services are performed by a member of the regular complement of the ship or aircraft, are to be treated as income from sources within that State.

Income from the purchase and sale of personal movable property is to be treated as income from sources within the State in which such property is sold. This rule conforms to the rule set forth in section 861(a)(6) of the Internal Revenue Code.

Notwithstanding the rules contained in paragraphs (1) through (7), industrial and commercial profits attributable to a permanent establishment which the recipient, being a resident of one State has in the other State, including

income dealt with in the articles pertaining to dividends, interest, royalties, and income from real property if from rights or property which are effectively connected with such permanent establishment, shall be treated solely as income from sources within that other State. The factors taken into account in determining whether such effective connection exists will include whether the income is derived from property used, or held for use, in the conduct of the commercial or industrial activities carried on through such permanent establishment or whether the commercial or industrial activities carried on through such permanent establishment were a material factor in the realization of the income. As previously noted under Article 3 (General Rules of Taxation), this source rule conforms to United States policy governing the taxation of business profits and investment income as expressed in the Foreign Investors Tax Act of 1966. Such policy is also reflected in the recent French Convention as well as the protocols to the German, Netherlands, and United Kingdom Conventions.

Several of the source rules set out in this Article differ to some degree from those existing in the Internal Revenue Code. Since Article 3 (General Rules of Taxation) provides that the Convention will not increase a person's United States tax, a taxpayer is entitled to use the more beneficial of the Code or Convention rules in calculating his income for United States tax purposes, or in the case of a citizen or resident of the United States, his foreign tax credit. The rule on interest in this Article permits Trinidad and Tobago, under the proper circumstances, to impose a tax on any interest paid by a permanent establishment in Trinidad and Tobago of a United States corporation. While the rule appears to be fully reciprocal, the United States will not, because of section 861(a)(1)(B) of the Code, impose on nonresident aliens and foreign corporations a tax on interest paid by a resident of the United States unless such resident derives 20 percent or more of its gross income from United States sources for the 3-year period ending with the close of the taxable year of such resident preceding the payment of such interest.

It should also be noted that the source rules do not serve to extend the benefits of this proposed Convention to persons other than residents of the two States. Generally, the rules are only applicable for taxing residents of either State and, therefore, are not applicable in determining source of income of residents of other States, although the income of such other residents is of a type referred to in this Article.

ARTICLE 6. NONDISCRIMINATION

The proposed Convention bans discrimination by one State against the nationals of the other State or of a permanent establishment of nationals or corporations of the other State. Thus, for example, a national of Trinidad and Tobago who is a resident of the United States and who otherwise meets the requirements specified in section 911 of the Internal Revenue Code would under this Article of the proposed Convention be eligible for the benefits of section 911 although such national is not a citizen of the United States.

This Article provides, however, that a State may accord special treatment to its own residents on the basis of civil status or family responsibility. This Article also provides that Trinidad and Tobago is not prohibited from imposing a branch profits tax in accordance with paragraph (5) of Article 12 (Dividends) and the United States from imposing a comparable tax burden on the income of a permanent establishment maintained by residents of Trinidad and Tobago in the United States.

The ban on discrimination extends to all taxes without regard to subject matter and whether imposed at the national, State, or local level.

This Article is substantially similar to the nondiscrimination Article of the OECD Model Convention except that the Model includes a provision concerning Stateless persons which has been omitted from the proposed Convention.

ARTICLE 7. TAX DEFERRAL FOR TECHNICAL ASSISTANCE

This Article provides for a reciprocal tax deferral which will be applicable when patents, processes, know-how and similar items, and ancillary technical services rendered in connection with the furnishing of such property or information, are provided by a resident of one State to a corporation of the other State in return for stock of the corporation of such other State. Under paragraph (3) of Article 28 (Effective Dates and Ratification) this Article shall only be effective with respect to stock received on or after the date the proposed Convention was signed (January 9, 1970).

Under this provision, a resident of one of the States may elect not to include in income, both for United States and Trinidad and Tobago tax purposes, any amount otherwise includable by reason of the receipt of stock in return for the enumerated items of property, information, or ancillary services. In order to qualify for the deferral, such resident must receive stock of a corporation of the other State as consideration for providing to such corporation, for use in connection with a trade or business actively conducted in that other State by such corporation, any of the following properties, information, or services:

(1) Any patent, invention, model, design, secret formula or process, or similar property right;

(2) Information concerning industrial, commerical or scientific knowledge, experience, or skill; or

(3) Technical, managerial, engineering, architectural, scientific, skilled, industrial, commercial, or like services which are ancillary and subsidiary to the transfer of the property rights referred to in (1) or any information referred to in (2).

Where such an election is made, expenses allocable to amounts excluded from income may not be deducted currently. Where the stock received is later disposed of, the amount originally excluded will then be included in income in the manner in which it would have been included upon receipt of such stock. Where the stock is sold for less than the amount originally excluded, the amount actually received on the sale is included in income as it initially would have been in the absence of this deferral provision. When the stock is disposed of, deductions previously disallowed because allocable to excluded amounts will be allowed and any gain upon such disposition will be determined as if the gain had been included in income, and the deductions allowed, upon original receipt of the stock.

This provision is made subject to regulations to be issued by both parties to the treaty.

In the case of the United States the Secretary of the Treasury or his delegate may prescribe such regulations as are necessary to effectuate the provisions of this Article and to further define and determine the terms, conditions, and amounts referred to in this Article. In the case of Trinidad and Tobago the Minister of Finance or his authorized representative may prescribe such regulations as are necessary to effectuate the provisions of this Article and to further define the terms, conditions, and amounts referred to in this Article. In particular, the Minister of Finance or his authorized representative is specifically authorized to prescribe by regulation standards for determining whether services referred to in paragraph (1) of this Article are ancillary and subsidiary to the property rights or information referred to in that paragraph.

In such regulations, the Minister of Finance could provide that this provision will only apply to an equity interest in a Trinidad and Tobago corporation issued to the United States shareholder in conformance with the Trinidad and Tobago law dealing with the allowable extent of foreign equity interests in Trinidad and Tobago corporations.

Authorization is granted to each State to require, by regulations, that a portion of the stock received in return for the enumerated property, information, or services be deposited with a designated bank or other depository for the purpose of assuring collection of any taxes payable upon its disposition.

Under this provision, a United States corporation can make a transfer of property to a Trinidad and Tobago corporation in exchange for the stock of that Trinidad and Tobago corporation, without regard to the provisions of section 351 of the Code, and elect not to include in income for United States tax purposes any gain otherwise recognized (whether under sections 1231 or 1249 of the Code) as a result of such transfer. In addition, that United States corporation can furnish "know-how" to the Trinidad and Tobago corporation and obtain the deferral for United States tax purposes without initially having to consider whether such "know-how" constitutes property for purposes of the application of section 351 of the Code. It can also provide the enumerated services, to the extent that they are rendered in connection with and subsidiary to the furnishing of property rights or information which are covered under the Article, without having the value of the portion of such stock which is attributable to the services included in income. This elective deferral privilege, which avoids cash problems involved in having to pay a current tax on the receipt of stock where the recipient wishes to hold, rather than sell, such stock, would, of course, also apply for purposes of the imposition of any Trinidad and Tobago tax otherwise due by reason of the transaction. Thus, where the connected services are

rendered in Trinidad and Tobago and stock in the Trinidad and Tobago corporation to which such services are provided is taken in consideration thereof, the United States resident taking such stock is not subject to (1) Trinidad and Tobago tax, until later disposition of the stock, and (2) any United States tax otherwise due by reason of the receipt of such stock.

ARTICLE 8. BUSINESS PROFITS

This Article sets forth the typical treaty rule that industrial or commercial profits of a resident of one State are taxable in the other State only if the resident has a permanent establishment in that other State. Where there is a permanent establishment only the industrial or commercial profits attributable to the permanent establishment can be taxed by that other State.

This Article represents an acceptance by Trinidad and Tobago of the principle that investment income should be taxed separately from industrial and commercial profits where appropriate. Absent the provision, Trinidad and Tobago would tax all income directly or indirectly accrued in or derived from Trinidad and Tobago, whether or not effectively connected with a permanent establishment, at the regular rates.

Under most of the United States Conventions negotiated prior to the new French Treaty, industrial or commercial profits are not taxed in the absence of a permanent establishment. However, once there is a permanent establishment these conventions, and the old French Convention, provide that the provisions reducing the tax rates on interest and dividends and exempting royalties are not applicable. This rule is known as the "force of attraction" principle and is replaced in the proposed Convention, as in our new treaty with France, with the effectively connected concept. Under the new approach, only that interest, dividends and royalties which are effectively connected with the permanent establishment are taxable as part of the industrial or commercial profits and only such income does not benefit from the reduced rate or exemption.

In determining the proper attribution of industrial or commercial profits under the proposed Treaty, the permanent establishment is generally to be treated as an independent entity and considered as realizing the profits which would be realized if the permanent establishment dealt with the resident of which it is a permanent establishment on an arm's length basis. Expenses, wherever incurred, which are reasonably connected with profits attributable to the permanent establishment, including executive and general administrative expenses, will be allowed as deductions by the State in which the permanent establishment is located in computing the tax due to such State. However, it is not necessary to allow a profit to the head office for ancillary services furnished to the permanent establishment as long as the permanent establishment is allowed to deduct the allocable costs incurred by the head office.

The mere purchase of goods or merchandise in a State by the permanent establishment, or by the resident of which it is a permanent establishment, for the account of such resident will not cause attribution of profits to such permanent establishment.

The term "industrial or commercial profits" means income derived from the active conduct of a trade or business. For example, it includes profits from manufacturing, mercantile, agricultural, fishing, and transportation activities. However, the term also includes investment income but only if the right or property giving rise to the income is effectively connected to a permanent establishment.

Income received by an individual as compensation for personal services (either as an employee or in an independent capacity) or insurance premiums, are not included within the definition of industrial or commercial profits. Further, rentals from motion picture films or films or tapes for radio or television broadcasting are not included within the definition of the term industrial or commercial profits under the proposed Convention.

This Article is substantially similar to the business profits article of the OECD Model Convention except that the Model Convention does not contain a definition of industrial or commercial profits.

ARTICLE 9. PERMANENT ESTABLISHMENT

This Article defines the term "permanent establishment." The existence of a permanent establishment is, under the terms of the proposed Convention, a prerequisite for one State to tax the industrial or commercial profits of a resident

of the other State. The concept is also significant in determining the applicability of other provisions of the Convention, such as Article 12 (Dividends), Article 13 (Interest), and Article 14 (Royalties). The definition of "permanent establishment" is a modernized version of the definition found in some of our older treaties. The new definition is similar to the definition found in our French Convention.

The term "permanent establishment" means "a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity." Illustrations of the concept of a fixed place of business include a seat of management, an office, a store or other sales outlet, a workshop, a factory, a warehouse, a place of extraction of natural resources, or a building, construction, or installation project which is used for such purpose for 6 months or more. As a general rule, any fixed facility through which an individual, corporation or other person conducts industrial or commercial activity will be treated as its permanent establishment unless it falls in one of the specific exceptions described below. The proposed Convention uses the term "a seat of management" which was the term used in our Convention with France. The technical explanation of our French Convention explains the definition of the term "a seat of management" and its difference in meaning from the term "a place of management" as follows:

> It should be noted that this convention uses the term "seat of management" where the OECD model convention and prior agreements to which the United States is a party used the term "place of management"; both terms are translations of the French term "un siege de direction" and it is believed the translation found in this convention is the more accurate. Prior agreements in which the term "place of management" appears will be interpreted therefore as if the words "seat of management" had been used.

That explanation is applicable to the proposed Trinidad and Tobago Convention.

This Article specifically provides that a permanent establishment does not include a fixed place of business of a resident of one of the Contracting States which is located in the other Contracting State if it is used only for one or more of the following:

(a) the processing by another person, whether related or unrelated, under arrangements or conditions which are or would be made between independent persons, of goods or merchandise belonging to the resident;

(b) the purchase, under arrangements or conditions which are or would be made between independent persons, of goods or merchandise for the account of the resident;

(c) the storage and/or delivery of goods belonging to the resident, (other than goods or merchandise held for sale by such resident in a store or other sales outlet);

(d) the collection of information for the resident;

(e) advertising, the conduct of scientific research, the display of goods or merchandise, or the supply of information, if such activities have a preparatory and auxiliary character in the trade or business of the resident; or

(f) construction, assembly, or installation projects if the site or facilities are used for such purposes for less than 6 months.

These exceptions are cumulative and a site or facility used solely for more than one of these purposes will not be considered a permanent establishment under the proposed Convention. The construction project rule is a physical test under which the resident must be actively engaged in the project during the specified period.

Notwithstanding the other provisions of this Article, a person will be considered to have a permanent establishment if he engages in business through an agent, other than an independent agent, who has and regularly exercises authority to conclude contracts in the name of such person unless the agent only exercises such authority to purchase goods or merchandise. The proposed Convention further provides that a resident of one State will be considered to have a permanent establishment in the other State if such resident engages in business in such other State through a person, who maintains in that other State, a stock of goods or merchandise belonging to such resident from which such person regularly fills orders or makes deliveries. A resident of one State will also be considered to have a permanent establishment in the other State if such resident maintains equipment or machinery for rental or other purposes within that other State for a period of 6 months or more.

With respect to an independent agent, the proposed Convention also provides that a resident of one State will not be deemed to have a permanent establish-

ment in the other State if such resident engages in industrial or commercial activity in such other State through an independent agent, such as a broker or general commission agent, if such agent is acting in the ordinary course of his business.

The determination of whether a resident of one State has a permanent establishment in the other State is to be made without regard to any control relationship of such resident with respect to a resident of the other State or with respect to a person which engages in industrial or commercial activity in that other State (whether through a permanent establishment or otherwise).

The Article provides that a resident of one of the States has a permanent establishment in the other State if it sells in that other State goods or merchandise that are either (1) subjected to substantial processing in that other State (whether or not purchased in the other State) or (2) purchased in that other State and such goods or merchandise are not subjected to substantial processing outside the other State. Under this rule, which is similar to the rule contained in the proposed Belgian Convention the taxpayer will have a permanent establishment whether or not he maintains a sales office in the other State. Thus, where an independent agent acting for a United States corporation arranges for the sale of goods in Trinidad and Tobago, the United States corporation will nevertheless be deemed to have a permanent establishment in Trinidad and Tobago where those goods were purchased in Trinidad and Tobago for that corporation by the agent (or by any other person) and then resold by the corporation without having been subjected to processing outside Trinidad and Tobago prior to such resale. With respect to a United States corporation selling goods purchased outside Trinidad and Tobago (or produced outside Trinidad and Tobago), their resale (or sale) in Trinidad and Tobago will of itself give rise to a permanent establishment only if these goods are subjected to substantial processing in Trinidad and Tobago.

If a resident of one State maintains a permanent establishment in the other State at any time during the taxable year, the permanent establishment will be considered to have existed for the entire taxable year.

ARTICLE 10. SHIPS AND AIRCRAFT

This Article provides that, notwithstanding the rules of Article 8 (Business Profits), a resident of Trinidad and Tobago will be exempt from tax in the United States on income derived from the operation in international traffic of ships or aircraft, including capital gain derived from the sale of a ship or aircraft used in such traffic, and that a resident of the United States will be exempt from tax in Trinidad and Tobago on income derived from the operation in international traffic of ships or aircraft, including capital gain derived from the sale of a ship or aircraft used in such traffic, registered in the United States. It should be noted that the registration requirement is only applicable in the case of a resident of the United States.

This Article also will apply to income derived from the leasing, to a person engaged in the operation of ships or aircraft, of a ship or aircraft under a full or bareboat charter, where the lessor is engaged in the operation of ships or aircraft if such lease is ancillary to the lessor's other operations. For example, if an airline of one of the Contracting States which has excess equipment in the winter months leases several aircraft which are excess during that period to an airline in the other Contracting State, the lessor is not subject to tax by that other Contracting State.

ARTICLE 11. RELATED PERSONS

This Article complements section 482 of the Internal Revenue Code of 1954 and confirms the power of each government to allocate items of income, deduction, credit, or allowances in cases in which a resident of one State is related to any other person if such related persons impose conditions between themselves which are different from conditions which would be imposed between independent persons. This provision is similar to the provision contained in the OECD Model Convention.

Provision is made in Article 23 (Mutual Agreement Procedures) for consultation and agreement between the two States where an allocation by either State results or would result in double taxation.

ARTICLE 12. DIVIDENDS

The proposed Convention provides for unilateral reduction on the part of Trinidad and Tobago with respect to dividends which are derived from sources within Trinidad and Tobago by a resident of the United States. Thus, the United States withholding tax which is imposed at a 30-percent rate on non-effectively connected dividends paid by United States corporations to nonresidents of the United States is not affected by the proposed Convention. In the absence of a convention, Trinidad and Tobago imposes a 30-percent withholding tax on dividends and branch profits remitted to nonresidents of Trinidad and Tobago. To determine the source of a dividend for the purposes of this Article, the rules contained in paragraph (1) of Article 5 (Source of Income) are used.

Under the proposed Convention Trinidad and Tobago may impose a withholding tax of 25 percent on the gross amount actually distributed with respect to portfolio investment dividends. The proposed Convention further provides that Trinidad and Tobago may impose a maximum rate of 10 percent with respect to intercorporate dividends if the recipient owns 10 percent or more of the stock of the paying corporation and generally if not more than 25 percent of the gross income of the paying corporation consists of dividends and interest. The rate of withholding which is imposed by Trinidad and Tobago on profits of a branch of a United States corporation located in Trinidad and Tobago is also limited to 10 percent.

The proposed Convention abandons the "force of attraction" concept by providing that the reduced rate of tax on dividends is denied only if the shares with respect to which the dividends are paid are effectively connected with a permanent establishment which the recipient United States resident has in Trinidad and Tobago. In such a case the dividends may be taxed as business profits in accordance with Article 8 (Business Profits) of the proposed Convention.

The proposed Convention also provides specific definitions of the term "dividends" in the case of the United States and Trinidad and Tobago. These terms allow each State to treat those payments which, under their internal law are treated as dividends, to be so treated for purposes of the proposed Convention. This rule is directly related to the position adopted in the proposed Convention with respect to remittances of a branch of a United States corporation, located in Trinidad and Tobago, to such corporation.

The proposed Convention also provides that dividends paid by a corporation of one of the States to a person other than a resident of the other State (in the case of dividends paid by a Trinidad and Tobago corporation, other than to a citizen of the United States) shall be exempt from tax by that other State unless such dividends are treated as income from sources within that other State under Article 5 (Source of Income). Thus, for example, if dividends are paid by a Trinidad and Tobago corporation to an individual who is a resident of a third country and who is not a citizen of the United States, and such dividends are not effectively connected with a permanent establishment located in the United States, the United States will not be able to subject this dividend to tax unless the Trinidad and Tobago corporation had a permanent establishment in the United States for a 3-year period and derived at least 50 percent of its gross income from industrial and commercial profits which are effectively connected with such permanent establishment. In such a case, the only amount subject to tax would be the pro rata portion of the permanent establishment's income which is effectively connected with the United States trade or business. In no case will the amount of the dividend which was treated as income from sources within the United States exceed the net amount of money or money's worth transferred from such permanent establishment during the 3-year period.

The proposed Convention also provides that where a corporation of one State has a permanent establishment in the other State and derives profits or income which are effectively connected with that permanent establishment, any remittance of such profits or income by that permanent establishment may be taxed as a distribution in accordance with the law of the other State at a rate which will not exceed 10 percent. This 10-percent rate corresponds to the reduced rate which is applied to intercorporate dividends under paragraph (1)(b) of this Article. This provision has been included to take into account the taxation of such remittances under the tax laws of Trinidad and Tobago. This provision only applies to remittances that are attributable to gains, profits, or income which is effectively connected with the permanent establishment in Trinidad and Tobago. Thus, if there is a permanent establishment in Trinidad and Tobago

and no income is earned which is treated as effectively connected with that permanent establishment, no portion of any remittance from that permanent establishment to the United States home office would be subject to this 10-percent tax.

It should be noted that this provision in no way affects the United States taxation of such remittances. Thus, since the United States would not treat such remittances as a dividend, the 10-percent tax which is imposed would not be treated as a tax imposed on the operations of the corporation in Trinidad and Tobago through a permanent establishment.

It should also be noted that the proposed Convention does not contain an Article dealing with capital gains. Both Trinidad and Tobago and the United States have domestic rules which provide a large measure of exemption for foreigners deriving capital gains. In the case of the United States, a nonresident alien is exempt from tax on capital gains unless he is present in the United States for a period or periods aggregating 183 days or more during the taxable year. In the case of Trinidad and Tobago, capital gains are taxed at normal rates. However, if the holding period of the asset is longer than 12 months, the gain is not regarded as income and is exempt from taxation. Since the proposed Convention does not provide a special rule for capital gains, paragraph (2) of Article 3 (General Rules of Taxation) applies.

ARTICLE 13. INTEREST

The proposed Convention provides for a unilateral reduction by Trinidad and Tobago of the rate of withholding tax which is imposed on interest which is received from sources within Trinidad and Tobago by a resident of the United States which is either a bank or other financial institution not having a permanent establishment in Trinidad and Tobago. In the case of such residents of the United States the rate of tax imposed by Trinidad and Tobago shall not exceed 15 percent of the gross amount paid. For purposes of determining the source of an interest payment, the rule provided in paragraph (2) of Article 5 (Source of Income) shall be used. It should be noted that if the recipient of an interest payment from sources within Trinidad and Tobago is a resident of the United States, other than a bank or financial institution which does not have a permanent establishment in Trinidad and Tobago, the reduced rate of tax which is provided in the proposed Convention will not apply. The proposed Convention also provides that interest received by one of the States or any wholly owned instrumentality of that State is exempt from tax by the other State. Thus, for example, interest which is received from sources within Trinidad and Tobago by the Export-Import Bank of the United States would not be subject to Trinidad and Tobago tax under this Article.

As in the case of dividends, the United States has not reduced its rate of withholding on interest under the proposed Convention. Thus, the United States may impose its withholding tax at the statutory rate of 30 percent on noneffectively connected interest which is derived by residents or corporations of Trinidad and Tobago from sources within the United States, except that interest derived by the Government of Trinidad and Tobago or any of its wholly owned agencies is exempt from such tax.

Under Trinidad and Tobago income tax law any interest payment paid by a subsidiary to its nonresident parent or brother company is deemed to be a nondeductible distribution of profits. Paragraph (5) has been added so as to limit the application of this rule to situations where the taxpayer cannot demonstrate the absence of tax avoidance as the motive for making the interest payment. Under the proposed Convention where excess interest payments are made because the payor and the recipient are related, the provisions of this Article apply only to so much of the interest as would have been paid to an unrelated person. The excess payment may be taxed by each State according to its own law including the provisions of the proposed Convention where applicable.

This Article contains a provision which is comparable to that found in Article 12 (Dividends) which states that interest paid by a corporation of one of the States to a person other than a resident of the other State (and, in the case of interest paid by a Trinidad and Tobago corporation, other than a citizen of the United States) shall be exempt from tax by the other State, unless such interest is treated as income from sources within that other State under paragraph (2) (b) or (8) of Article 5 (Source of Income).

ARTICLE 14. ROYALTIES

The proposed Convention provides on a reciprocal basis an exemption for artistic and literary royalties but permits a tax to be levied at a maximum rate of 15 percent on other royalties.

The term "royalties" is defined to include payments of any kind made as consideration for the use of, or the right to use, copyrights, artistic or scientific works, patents, designs, plans, secret processes or formulae, trademarks or other like property or rights (not including motion picture films or films or tapes for radio or television broadcasting) or information concerning industrial, commercial, or scientific knowledge, experience, or skill.

For purposes of the proposed Convention, the term "royalties" does not include any royalties, rentals, or other amounts paid in respect of the operation of mines or quarries or other natural resources. The rules applicable to such income are contained in Article 15 (Income from Real Property) of the proposed Convention.

The provisions of this Article do not apply if the recipient of a royalty has a permanent establishment in a State of source and the rights or property giving rise to such royalty is effectively connected with such permanent establishment. In such a case, the royalty may be taxed as industrial or commercial profits under Article 8 (Business Profits). Thus, the "force of attraction" principle is also abandoned with respect to royalties. To determine the source of a particular royalty, the rules provided in paragraph (3) of Article 5 (Source of Income) shall be used.

Under the proposed Convention, if excess royalties are paid because the payor and recipient are related, the provisions of the royalties Article apply only to so much of the royalty as would have been paid to an unrelated person. The excess payment may be taxed by each State, according to its own law including the provisions of the proposed Convention where applicable.

ARTICLE 15. INCOME FROM REAL PROPERTY

This Article provides a resident who is subject to taxation on income from real property with an election to be taxed on a net basis. The election applies to income from real property, including gains derived from the sale or exchange of such property, and natural resource royalties. Each State retains the right to tax income from real property under paragraph (1) of Article 3 (General Rules of Taxation).

ARTICLE 16. INVESTMENT OR HOLDING COMPANIES

This Article denies the benefits of the dividends, interest, and royalties Articles to a corporation of one of the States deriving such income from sources within the other State if (1) such corporation is entitled to special tax benefits which result in the tax imposed on such income being substantially less than the tax generally imposed on corporate profits in such State, and (2) 25 percent or more of the capital of the corporation is owned directly or indirectly by one or more persons who are not individual residents of such State or, in the case of a Trinidad and Tobago corporation, are citizens of the United States.

The purpose of this Article is to deal with a potential abuse which could occur if one of the States provided preferential rates of tax for investment or holding companies. In such a case, residents of third countries could organize a corporation in the State extending the preferential rates for the purpose of making investments in the other State. The combination of the low tax rates in the first State and the reduced rates or exemptions in the other State would enable the third-country residents to realize unintended benefits.

ARTICLE 17. INCOME FROM PERSONAL SERVICES

This Article provides that an individual resident of one State is exempt from tax by the other State with respect to income from personal services performed in such other State if such person is physically present there for not more than 183 days, in the aggregate, during the taxable year and either (1) such individual is an employee of a resident of a State other than the State of source (or an employee of a permanent establishment of a resident of the State of source located outside such State) and the amount of such income is not deducted in computing the profits of a permanent establishment of the State of source; or (2) such income does not exceed $3,000 or its equivalent in Trinidad and Tobago dollars.

Thus, if such individual's employment income does not exceed $3,000 or its equivalent in Trinidad and Tobago dollars, such individual need only satisfy the physical presence limitation in order to qualify for the exemption.

Compensation for services performed as a member of the regular complement aboard ships or aircraft operated in international traffic by a resident of one State (and in the case of the United States, registered in the United States) are exempt from tax in the other State. This exception does not limit a State's right to tax its own citizens or residents.

"Income from personal services" includes income from the performance of personal services in an independent capacity and "employment income." Employment income includes income from services performed by officers and directors of corporations. However, income from personal services performed by partners is treated as income from the performance of services in an independent capacity.

The exemption applicable to personal service income is limited in the case of (1) public entertainers, such as musicians, actors, or professional athletes, and (2) any person providing the services of a person described in (1) even though such income may otherwise be considered exempt under some other provision of this Convention. These persons are taxable if their income from such activities exceeds $100 (or its equivalent in Trinidad and Tobago dollars) for each day the individual is present for purposes of performing within the State.

ARTICLE 18. TEACHING AND RESEARCH

This Article of the proposed Convention provides a reciprocal exemption from tax for personal service income of visiting teachers or researchers. This exemption applies to an individual who is a resident of one State at the time he is invited by the Government of the other State or by an accredited educational institution of the other State to teach or do research in the other State and temporarily comes to such other State in order to engage in such teaching or research at such an accredited educational institution. However, the exemption does not apply to income (1) from research undertaken not in the public interest but primarily for private benefit of a specific person or persons or (2) in cases where an agreement exists between the Governments of States for the provision of the services of such individuals. If the individual's visit exceeds a period of 2 years from the date of arrival, the exemption applies to the income received by the individual before the expiration of such 2-year period.

ARTICLE 19. STUDENTS AND TRAINEES

This Article provides that an individual who is a resident of one State at the time he becomes temporarily present in the other State for the purpose of studying at a university or other accredited institution, of securing training for qualification in a profession or of studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational institution is exempt from tax in the host State on:

(1) Gifts from abroad for his maintenance and study;

(2) The grant, allowance, or award;

(3) Income from personal services performed in the host State not in excess of $2,000 (or its equivalent in Trinidad and Tobago dollars) for any taxable year. The $2,000 exemption is increased to $5,000 if a resident is securing training required to qualify him to practice a profession or a professional specialty.

These exemptions continue for such period of time as may be reasonably or customarily required to effectuate the purpose of his visit but in no event may an individual have the benefit of this provision for more than a total of 5 taxable years from the date of arrival.

In addition, a resident of one State employed by or under contract with a resident of that State who, at the time he is a resident of that State, becomes temporarily present in the other State for the purpose of studying or acquiring technical, professional, or business experience other than from a resident of the first-mentioned State is exempt from tax in the host State on income not, in excess of $5,000 (or its equivalent in Trinidad and Tobago dollars) from personal services rendered in the host State. The individual is exempt for a period of one year which period commences with the first day of the first month in which he begins working or receives compensation.

Also, an individual who is a resident of one State at the time he becomes temporarily present in the other State for a period not exceeding one year

and who is temporarily present in the host State as a participant in a government program of the host State for the primary purpose of training, research or study is entitled to an exemption by the host State with respect to his income from personal services relating to such training, research, or study performed in the host State in an amount not in excess of $10,000 (or its equivalent in Trinidad and Tobago dollars).

If an individual qualifies for the benefits of more than one of the provisions of the personal services Articles, he may choose the provision most favorable to him but he may not claim the benefits of more than one provision in any taxable year.

ARTICLE 20. GOVERNMENTAL SALARIES

The proposed Convention provides that wages, salaries, and similar compensation, pensions, annuities, or similar benefits, which are paid by or from the public funds of one of the States to an individual who is a national of that State for services rendered to that State in the discharge of governmental functions shall be exempt from tax by the other State.

Unlike the French Convention the proposed Convention does not apply to political subdivisions of a State. Thus, for example, employees of a State or municipal government of the United States employed in Trinidad and Tobago will not be exempt from Trinidad and Tobago tax under the proposed Convention.

With respect to the application of this provision to Trinidad and Tobago, it should be noted that Trinidad and Tobago taxes on the basis of residence and not citizenship. Further, a person loses his resident status in Trinidad and Tobago for tax purposes if he remains outside the country for a continuous period of 6 months. Thus, a resident of Trinidad and Tobago employed abroad can be subject to tax in Trinidad and Tobago for no more than 6 months.

The proposed Convention also adds a specification that the compensation must be paid in connection with the discharge of functions of a governmental nature. Compensation paid in connection with industrial or commercial activity is treated the same as compensation received from a private employer. The provisions relating to dependent personal services, private pensions and annuities, and social security payments would apply in such a case.

ARTICLE 21. RULES APPLICABLE TO PERSONAL INCOME ARTICLES

This Article extends the benefits of the personal services Articles (Articles 17 through 20) to reimbursed travel expenses. However, such reimbursed expenses will not be taken into account in computing the maximum amount of exemptions specified in Articles 17 (Income from Personal Services) and 19 (Students and Trainees). If an individual qualifies for the benefits of more than one of the provisions of Articles 17 through 20, he may choose the provision most favorable to him but he may not claim the benefits of more than one Article with respect to the same income in any one taxable year.

ARTICLE 22. PRIVATE PENSIONS AND ANNUITIES

The proposed Convention provides that private pensions, private life annuities, and alimony which are paid to an individual who is a resident of one of the States shall be exempt from tax in the State of source.

The term "life annuities" is defined to mean a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make payments in return for adequate and full consideration in money or money's worth.

The term "pension" is defined as periodic payments made after retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.

The term "alimony" is defined as periodic payments made pursuant to a decree of divorce or of separate maintenance which are taxable to the recipient under the internal laws of the State of which he is a resident. Thus, the term "alimony" would not include a payment which would not be taxable to the recipient under the laws of the State in which he is a resident even though such payment is made pursuant to a decree of divorce or of separate maintenance.

The effect of this provision is the same as that of the OECD Model Convention.

ARTICLE 23. MUTUAL AGREEMENT PROCEDURES

This Article provides that the competent authorities of the States may prescribe regulations for implementing the present Convention within their respective States and may communicate with each other directly for the purpose of carrying out and giving effect to the provisions of this Convention.

This Article also provides that the competent authorities of the two States will endeavor to settle by mutual agreement cases of taxation not in accordance with the Convention as well as any other difficulties or doubts arising as to the application of the Convention. Some particular areas on which the competent authorities may consult and reach agreement are (1) the amount of industrial and commercial profits to be attributed to a permanent establishment, (2) the allocation of income, deductions, credits, or allowances between a resident and any related person, and (3) the determination of the source of particular items of income in accordance with the rules set forth in Article 5 (Source of Income).

In implementing the provisions of this Article, the competent authorities will communicate with each other directly and meet together for an exchange of oral opinions where advisable.

In cases in which the competent authorities reach agreement with respect to a particular matter, taxes will be adjusted and refunds or credits allowed in accordance with such agreement. This provision permits the issuance of a refund or credit notwithstanding procedural barriers otherwise existing under a State's law, such as the Statute of Limitations.

This provision will apply only where agreement or partial agreement has been reached between the competent authorities and will apply in the case of any such agreement after the Convention goes into effect even though the agreement may concern taxable years prior thereto.

Revenue Procedure 70–18 sets forth the procedures followed by the United States in implementing its obligations under this type of article.

ARTICLE 24. EXCHANGE OF INFORMATION

This Article provides for a system of administrative cooperation between the competent authorities of the two States and specifies conditions under which information may be exchanged to facilitate the administration of the Convention and to prevent fraud and the avoidance of taxes to which the Convention relates.

Information exchanged is treated as secret and may not be disclosed to any persons other than those (including a court or administrative body) concerned with the assessment, collection, enforcement, or prosecution of taxes subject to the Convention, but this does not prohibit disclosure in the course of a court proceeding. In no case does this Article impose an obligation on either State to exchange information which would disclose trade secrets or similar information. Further, information shall not be exchanged unless that information is available to a Contracting State under its taxation laws and administrative procedures.

The mutual exchange of information called for by these provisions is presently in effect in most of the conventions to which the United States is a party.

ARTICLE 25. ASSISTANCE IN COLLECTION

This Article provides for mutual assistance in the collection of taxes where required to avoid an abuse of the Convention. The provision is intended merely to insure that the benefits of the Convention will only be available with respect to persons entitled to such benefits; it does not in any way alter the rights under other provisions of the Convention.

The Article provides that each State will endeavor to collect for the other State such amounts as may be necessary to insure that any exemption or reduced rate of tax granted under the proposed Convention will not be availed of by persons not entitled to those benefits. However, this Article will not require a State, in order to collect taxes which are imposed by the other State, to undertake any administrative measures that differ from its internal regulations or practices nor will this Article require a State to undertake any administrative or judicial measures which are contrary to that State's sovereignty, security, or public policy.

ARTICLE 26. TAXPAYER CLAIMS

This Article provides for the administrative review of taxpayer claims. Thus, when a resident of one State considers that action has resulted or will possibly

result in taxation contrary to the provisions of the Convention, such resident may present his case to the competent authority of the State of which he is a resident. This remedy is in addition to any remedy provided by the law of either State. The competent authority of the State to which the claim is made shall, if he thinks the claim has merit, endeavor to settle this claim with the competent authority of the other State. In cases in which the competent authorities reach agreement with respect to a particular matter, taxes will be imposed and refunds or credits allowed (as provided in Article 24 (Mutual Agreement Procedures)) in accordance with such agreement.

ARTICLE 27. EXCHANGE OF LEGAL INFORMATION

This Article specifically provides that the competent authority of each State will advise the competent authority of the other State of any addition to or amendment of tax laws which concern the imposition of taxes which are the subject of this Convention. It is further provided that the competent authority of each State will exchange the texts of all published material interpreting the present Convention under the laws of the respective States, whether in the form of regulations, rulings, or judicial decisions.

ARTICLE 28. EFFECTIVE DATES AND RATIFICATION

This Article provides for the ratification of the proposed Convention and for the exchange of instruments of ratification. The proposed Convention will have effect for taxable years beginning on or after the first day of January of the year in which the instruments of ratification are exchanged. However, (1) the provisions of paragraph (2) of Article 7 (Tax Deferral for Technical Assistance) shall be effective with respect to stock received on or after the date of the signing of the Convention and (2) Trinidad and Tobago agrees, following the signing of this Convention, to take all steps that are necessary to give effect to the provisions of Article 12 (Dividends) so that the provisions of that Article shall be effective from January 1, 1970, and shall terminate on December 31, 1970, unless this Convention has been ratified by both States. This provision was added in order to authorize Trinidad and Tobago to reduce the rate of its withholding on dividends as soon as the Convention is signed and not postpone this reduction until the Convention is ratified.

This Article also provides rules for terminating the Convention. The Convention will continue in effect indefinitely, but may be terminated by either State at any time after 5 years from the first day of January of the year in which the instruments of ratification are exchanged. A State seeking to terminate the Convention must give notice at least 6 months before the end of the calendar year through diplomatic channels. If the Convention is terminated such termination shall be effective for taxable years beginning on or after the first day of January next following the expiration of the 6-month period.

ARTICLE 29. EXTENSION OF CONVENTION

This Article provides a method by which either State may extend the Convention, either in whole or in part or with such modification as may be found necessary for special application in a particular case, to all or any areas for whose international relations the State is responsible and which area imposes taxes substantially similar in character to those which are the subject of this Convention.

Extension to an area may be accomplished by a State through a written notification given to the other State through diplomatic channels. The other State shall indicate its acceptance by a written communication through diplomatic channels. When the notification and communication have been ratified in accordance with the constitutional procedures of each State and instruments of ratification exchanged the extension will take effect for the date specified in, and be subject to such conditions as are specified in, the notification. Without such acceptance and exchange of instruments of ratification in respect of an area, none of the provisions of this Convention shall apply to such areas.

Either of the States may terminate an extension with respect to an area by 6 months prior written notice of termination given to the other State at any time after the date of entry into force of the extension. The termination will take effect for taxable years beginning on or after the first day of January next

following the expiration of the 6-month period. The termination of an extension to a particular area shall not affect the application of the Convention to the United States, Trinidad and Tobago, or any other area to which the Convention has been extended.

OCTOBER 6, 1970.

TECHNICAL EXPLANATION OF PROPOSED UNITED STATES-NETHERLANDS ESTATE TAX CONVENTION

(Department of the Treasury)

INTRODUCTION

The proposed Estate Tax Convention and Protocol with the Netherlands is the first estate tax convention to be sent to the Senate since the Convention between the United States and Canada, which was ratified on January 31, 1962. That Convention replaced an earlier estate tax convention between the two countries. Prior to that the most recent estate tax convention forwarded to the Senate was with Italy. It was ratified on July 29, 1955.

The proposed Convention is substantially different from the twelve existing tax conventions[1] principally because of two significant developments since the negotiation of our last estate tax convention. The new convention is the first to reflect changes and the policies underlying those changes in United States estate taxation of nonresident aliens contained in the Foreign Investors Tax Act of 1966. The proposed convention is also based, in part, on the provisions of the OECD Model Estate Tax Convention (entitled Draft Double Taxation Convention on Estates and Inheritances), published in 1966 by the Organization for Economic Co-operation and Development, to the extent consistent with the laws and policies of the United States and the Netherlands. The United States played a substantial part in the drafting of the model convention. As the United States nears the completion of its income tax convention network in Western Europe (based on the OECD Model Income Tax Convention), we are seeking a complementary estate tax convention system. The proposed convention reflects a coordination and rationalization of the Netherlands succession and transfer duties (typical of Western European legal systems) with the United States estate tax.

However, most of the provisions in the proposed convention are found in the existing conventions and only a few provisions are new, such as Article 4, which provides rules designed to ameliorate tax problems of persons temporarily present in a foreign country, and Article 10(1), which provides for a marital exemption.

The provisions of the proposed Convention are discussed article by article below, after brief summaries of the Federal estate tax, the Dutch succession and transfer duties, and the general approaches of existing United States estate tax conventions and the OECD Model Convention.

FEDERAL ESTATE TAX

The Federal estate tax is imposed with respect to the worldwide estates of decedents who were citizens or residents of the United States at death and on the estates of nonresidents who were not citizens (referred to hereafter as nonresident aliens) with respect to their property deemed situated in the United States. For Federal estate tax purposes, a resident of the United States is a domiciliary therein, *i.e.*, a person residing in the United States who has the intention to remain in the United States indefinitely or a person who has lived in the United States with such an intention and who subsequently left the United States without having the intention to remain indefinitely in the country of his new residence. In other words, while the term "resident" is used in the estate tax laws, it is generally defined in terms of the common law rules with respect to domicile.

For situs rules of United States domestic law, see sections 2104 and 2105 of the Internal Revenue Code of 1954 (the "Code") and the regulations thereunder; for a discussion of the more important types of property taxable on the basis of

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[1] The United States has estate tax conventions in force with Australia, Canada, Finland, France, Greece, Ireland, Italy, Japan, Norway, Switzerland, the Republic of South Africa, and the United Kingdom.