
Nicholas S. Freud
Treaty Shopping and the 1981 United States Treasury Draft Model Income Tax Treaty *

By NICHOLAS S. FREUD
A.B., Yale University, 1963; J.D. Yale University, 1966; Partner, Chickering & Gregory, San Francisco; Chairman of the California State Tax Bar Section, 1983-84.

I. INTRODUCTION

Income tax treaties generally provide for a reduction in the level of tax applicable to payments from sources within either of the contracting states. They also provide an administrative mechanism for accomplishing this goal.

This Article deals with the practice of establishing entities in countries having favorable income tax treaties with the United States, in order to secure a lower U.S. withholding tax rate on “fixed or determinable annual or periodical [sic] gains, profits, and income,”¹ or some other benefit particular to a given treaty. This practice is commonly known as “treaty shopping.” Some consider treaty shopping to serve a permissible policy purpose of attracting foreign capital to the United States; some consider treaty shopping an abuse that exacerbates a perceived inequity under which nonresidents of the United States generally pay less tax on their U.S. portfolio investments than do residents. This Article will list some examples of treaty shopping situations, summarize the treatment of treaty shopping by the courts and the Internal Revenue Service, and analyze treaty approaches to the problem.

II. EXAMPLES OF TREATY SHOPPING

The following list is by no means exhaustive. It does, however, represent some common types of treaty shopping situations.

---

* Portions of this article have appeared earlier in another article by the author published in 82-4 Tax MGMT. INT'L J. (April 1982). Information contained in this article is current as of its preparation in March of 1983.

¹. I.R.C. § 1441(b).
A. Nonresident Alien Portfolio Investments

A nonresident alien individual, who is a resident of a non-treaty country which taxes only on source income of that country and, accordingly, does not give a foreign tax credit, may organize a holding company in a jurisdiction with which the United States has a tax treaty. The holding company then invests in United States securities and real estate. In this way, the nonresident alien hopes to experience a lower current rate of income taxation on his or her portfolio investments, by virtue of reduced withholding tax rates. In addition, the nonresident alien wants to ensure that none of his or her investments are subject to U.S. federal estate tax. Since, under our assumption, the income of the holding company will not be sourced in the individual's home country, it will not be subject to tax there. The Netherlands Antilles and, to some extent, Barbados, are popular jurisdictions for this use. Prior to the termination of the U.S. treaty with the British Virgin Islands, it, too, was a popular jurisdiction for this purpose.

B. International Finance Subsidiaries

A U.S. multinational company wishes to secure offshore financing by issuing bonds or similar securities to nonresident aliens. In order to ensure that the interest payments on such securities do not bear a 30% withholding tax, which could make borrowing more expensive or cause a marketing disincentive, the multinational company organizes an international finance subsidiary in a jurisdiction with a treaty, which enables the multinational company to pay interest on the securities free of U.S. withholding tax. The Netherlands Antilles is generally the most favorable site for such organizations, although some major banks had previously used the British Virgin Islands for this purpose.²

² Note, however, that treaties are not the only means of reducing the 30% withholding rate. For example, Guam has attempted to benefit from the possessions rules in the Internal Revenue Code that allow some forms of income to go untaxed by attracting foreign investors to invest in the United States through Guam corporations. The Service has challenged this approach in Rev. Rul. 83-9, 1983-2 I.R.B. 9, which provides, in effect, that exemption from U.S. tax only applies where Guamanian tax is paid. The governor of Guam has challenged this attempt to interpret the Guam Territorial Income Tax as "An attempt by the U.S. Treasury Department to exercise regulatory authority improperly over a territorial jurisdiction [sic] over which it has no authority" in a January 7, 1983, letter to Internal Revenue Commissioner Roscoe Egger, quoted in Tax Havens: Guam Protests IRS Regulations Shutting Down Possession Withholding Exemption, [Jan.-Mar.] DAILY TAX REP. (BNA) No. 10, at G-3 (January 14, 1983).
C. The Domestic Double Bank Shot

A U.S. corporation wishing to do business in a country with which the United States does not have an income tax treaty, rather than doing business directly in that country, does business through a subsidiary located in a jurisdiction which has a treaty both with the United States and with the country in which the U.S. corporation wishes to do business. This technique has often been used by U.S. companies who wished to invest in South America. This accounts, in part, for the Treasury's increasingly visible desire to negotiate income tax treaties with South American countries.

D. The Foreign Double Bank Shot

A multinational company organized in a jurisdiction which has an income tax treaty with the United States and does business in the United States may have a U.S. withholding tax rate of less than 30%. This company finds, however, that it can secure a still lower U.S. withholding tax rate on dividends than that afforded by its country's treaty, if it forms a holding company in a jurisdiction with an even more favorable treaty. Many Canadian companies invest in the United States through Dutch holding companies for precisely this reason.

III. TREATY SHOPPING AS A SHAM TRANSACTION

The practice of treaty shopping has seldom been encountered by the courts. When it has, the practice has generally been regarded as a sham transaction.

Aiken Industries, Inc. 3 is the leading case in this area. In Aiken, the taxpayer owed a substantial amount of money to a related Bahamian corporation; and interest payments were subject to a 30% tax withheld at the source. In order to avoid application of this tax, the Bahamian corporation transferred the notes to a newly-created Honduran corporation, in exchange for notes of the Honduran corporation with virtually identical terms. At the time, the United States had a treaty with Honduras; and the Honduran corporation accordingly claimed that it was exempt from the 30% withholding tax on the interest paid by Aiken. The tax court did not agree, holding that by virtue of the back-to-back loans with the Bahamian corporation, the Honduran corporation was not the true recipient of the interest and, therefore, was not entitled to the exemption.

3. 56 T.C. 925 (1971).
In *Perry R. Bass*, the taxpayer, a United States person, transferred an undivided working interest in oil-producing property to a wholly-owned Swiss corporation, which thereby became exempt from U.S. tax on its share of the income, pursuant to the income tax treaty between the United States and Switzerland. In this case, the court held that the Swiss corporation was a viable separate entity, finding that the Swiss corporation had signed working agreements, collected royalties, made investments, and carried out business activities. Indeed, the shareholders were present in Switzerland for some annual meetings.

*Johannson v. United States* involved the Swedish heavyweight boxing champion who attempted to claim an exemption provision in the Swiss treaty by claiming that he was a resident of Switzerland and an employee of a Swiss corporation at the time of his fights against Floyd Patterson in the United States. He lost both the fights and the case. The court found that Johannson was not a Swiss resident primarily because he spent less time during the period involved in Switzerland (79 days) than he did in either Sweden (120 days) or the United States (218 days) and thus did not show the requisite intent to reside in Switzerland. Moreover, the court found that Johannson acted independently of the Swiss corporation, which, in turn, was found to have no legitimate business purpose.

*Compagnie Financiere de Suez et de L'Union Parisienne v. United States*, while not strictly involving a sham transaction, provides an interesting study of a court's willingness to create a theory to justify its result. The taxpayer, which built and operated the Suez Canal until it was nationalized in 1956, claimed that it was a French company and was therefore entitled to benefits under the French income tax treaty with the United States. The court held that the company was an Egyptian company, and stated in dictum that had the company been considered a French company, it would not be subject to tax under French law. The court noted that the treaty between France and the United States was designed to prevent double taxation and could not be used to prevent all taxation.

IV. THE ADMINISTRATIVE VIEW

In view of the comparatively close scrutiny given to treaty shopping transactions by the courts, it is interesting that the administrative

---

4. 50 T.C. 595 (1968).
5. 336 F.2d 809 (5th Cir. 1964).
6. 492 F.2d 798 (Ct. Cl. 1974).
Treaty Shopping

approach, at least on the rulings level, has been somewhat more cavalier.

Several rulings have dealt with persons who were not residents of the Netherlands or of the Netherlands Antilles and who formed corporations located therein to invest in U.S. real estate or other properties. These rulings seem to concentrate on whether a 5% or a 15% tax rate on dividends is applicable and assume that the organization of the Netherlands or the Netherlands Antilles entity is proper in the first place. This theme is echoed in several private letter rulings. Of special note is Private Letter Ruling 7723035, which goes so far as to state:

The Netherlands was selected for incorporation because it is a financial center that imposes no withholding tax on interest paid by a Dutch entity to foreigners, and because of its favorable internal income tax structure and extensive network of tax treaties providing for favorable treatment of interest income paid to Dutch entities.

Recently, however, the Service has begun to question the motives of taxpayers' offshore rearrangements of their corporate affairs. It has denied treaty protection in at least one instance which involved a transfer of shares from Bermuda to Barbados, where the taxpayer was unable to show the absence of a tax-avoidance motive.

As one approaches the policy-making levels of the administrative branch, the degree of interest in treaty shopping appears to increase. In his report *Tax Havens and Their Use by United States Taxpayers — An Overview*, Richard A. Gordon, then Special Counsel for International Taxation and now International Tax Counsel to the Joint Committee on Taxation, conceded that the transactions described in the portion of his report entitled *Third Country Resident Use of United States Tax Treaties with Tax Havens* were permissible because of the conflict between two inconsistent policy objectives: "(1) Encouraging foreign investment in the United States and the free flow of international trade and capital; (2) Not treating foreign investment in the United States differently from investment by United States persons, and not provid-

8. See, e.g., PLRs 7903052, 7903048, 7830149, 7815026, 7809024, 7748013, 7742048, 7739080, and 7723035. This is, of course, not an exhaustive list.
9. PLR 8108107. See also Rev. Rul. 81-132, 1981-1 C.B. 603, which disallowed the 5% treaty rate on dividends paid by a U.S. subsidiary to its Dutch parent, where the shares were not directly owned throughout the period. Note, however, a more recent private letter ruling, PLR 8250028, in which the use of a Dutch company by an Argentine citizen resulted in application of the reduced 5% treaty rate.
ing incentives to foreign investment by United States companies." The report determines that successful treaty shopping consists of three elements: a reduction of source country taxation; a low or zero effective rate of tax in the payee treaty country; and a low or zero rate of tax on payments from the payee treaty country to the taxpayer. The first element is clearly provided under our current treaty network, by treaty reduction of the U.S. withholding tax rate.

In view of Mr. Gordon's current policy-sensitive position, the last paragraph of his treaty analysis deserves quotation in full:

>The first inquiry therefore is whether, in fact, we wish to curtail some or all of the above described transactions. Such a decision requires basic policy analysis and decisions which are beyond the scope of this report. However, it should be pointed out that much of what we say we are doing through treaty policy, that is, encouraging inward investment, could be done unilaterally through the Code. What would be lost would be the reciprocal benefits which we can negotiate; what would be gained would be a clearer, more rational tax system. Also, the existence of treaty shopping potential discounts the value of high withholding taxes as a bargaining chip in treaty negotiations. As long as the treaty shopping potential exists, there is less pressure on other treaty countries whose residents invest in the United States through treaty countries to negotiate with the United States.\footnote{Id. at 159.}

One attempt to encourage inward investment in the United States through unilateral amendment of the Code was H.R. 4618,\footnote{97th Cong., 1st Sess., 127 CONG. REC. H6677 (daily ed. Sept. 29, 1981).} which would have eliminated the 30% withholding tax on portfolio interest. While this bill did not pass in the last Congress, it is still alive. The interplay of such proposed legislation with current attitudes in treaty negotiation and policy will be discussed after an analysis of the existing approach to the problem of treaty shopping as manifested by the income tax treaties.

\section*{V. TREATY APPROACHES}

The treaty approach in the area of treaty shopping is essentially concerned with the interposition of a foreign corporation between an item of U.S. source income and a foreign recipient. The point of the interposition is to convert the source of that income from the United States to the jurisdiction of the foreign corporation. When the plan

\footnotesize{\begin{itemize}
  \item 11. Id. at 152.
  \item 12. Id. at 159.
  \item 13. 97th Cong., 1st Sess., 127 CONG. REC. H6677 (daily ed. Sept. 29, 1981).}
\end{itemize}}
works, such a corporation is sometimes referred to as a "source converter." The putative utility of a source converter is to allow the item of U.S. source income to be subjected initially to a U.S. withholding tax at a favorable rate ("primary withholding") and to argue that when the foreign corporation then pays the identical item out to its owner, the foreign corporation is not required to withhold a second U.S. withholding tax because the item is no longer U.S. source income.\(^{14}\) The requirement that the foreign corporation withhold a second withholding tax on distributions by it of U.S. source income of the same character is known as "secondary withholding."\(^{15}\)

Secondary withholding applies when either the interposed corporation is so insubstantial in nature as to allow the argument that the interposed corporation should be disregarded or when a source rule or an income tax treaty so provide. The 1981 draft U.S. Treasury Model Treaty\(^{16}\) requires secondary withholding in its provisions regarding interest, dividends and royalties. The provisions regarding limitations on treaty benefits, however, generally focus on the primary withholding tax by looking at the recipient entity to see whether it qualifies for the reduced rate of withholding tax otherwise provided by the treaty. Thus, while income tax treaties deal with both the primary and the secondary withholding problems inherent in treaty shopping, the limitation provisions discussed below involve primary withholding.

The United States has limited the availability of treaty benefits to

\(^{14}\) As noted above, see supra note 2, use of a treaty country corporation is not the only method of converting the source of U.S. income to eliminate withholding. Payments of interest from the United States to a Guam corporation are not subject to withholding in the United States because a Guam corporation is not deemed to be a foreign corporation under I.R.C. §§ 881(b) and 1442(c). Guam taxes income by using the Internal Revenue Code of 1954, as amended, substituting the word "Guam" for "United States" wherever it appears. Accordingly, under section 861(a)(1)(B) of the Guam code, the income of the Guam corporation is not Guam source income, and hence not subject to Guamanian withholding or tax, to the extent that the interest income of the Guam corporation constitutes less than 20% of its gross income from all sources for the preceding three-year period. In Rev. Rul. 83-9, supra note 2, the Service takes a contrary view, whose technical underpinnings seem cloudy.

\(^{15}\) The Service finally recognized that secondary withholding is clearly required by the Code, even though the statutory withholding agent is a foreign corporation. Rev. Rul. 80-362, 1980-2 C.B. 208. The key element in this ruling, which involved royalties, was that the interposed Netherlands corporation did not act as a source converter due to the fact that under I.R.C. § 861(a)(4) the source of the royalty continued to be U.S. source, since the payment arose from the use of a patent in the United States. Surprisingly, however, it appears that the Chief Counsel of the Internal Revenue Service opposed publication of this ruling on the ground that the Aiken case, 56 T.C. at 925, sufficed to address the problem. General Counsel Memorandum 38409 (June 12, 1980).

\(^{16}\) Treasury Department's Model Income Tax Treaty, 1 TAX TREATIES (CCH) ¶ 158 (June 16, 1981) [hereinafter cited as 1981 Draft Model Treaty].
certain kinds of entities formed in the jurisdiction of its treaty partner in twenty cases, not all of which have resulted in a treaty which is currently in effect.\textsuperscript{17}

The provisions which limit the availability of treaty benefits in the current network of treaties may be classified into five types: the 1977 U.S. Treasury Model Treaty (the 1977 Model Treaty) provision;\textsuperscript{18} the 1981 draft U.S. Treasury Model Treaty (the 1981 Draft Model Treaty) provision;\textsuperscript{19} the BVI Clause;\textsuperscript{20} the exemption of specified entities; and specifically negotiated clauses. Each such classification will be considered below.

A. 1977 United States Treasury Model Treaty Provision

Article 16 of the 1977 Model Treaty, entitled "Investment or Holding Companies," provides:

If 25 percent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special meas-

\textsuperscript{17} The list of the jurisdictions is as follows:
Argentina, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 303 (ratified May 7, 1981);
Australia (proposed treaty signed but not ratified), 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 402 (Aug. 6, 1982);
Brazil (in negotiation for a long time), 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 802 (signed Mar. 13, 1967);
British Virgin Islands (signed but not ratified; sent back to White House for renegotiation), 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 1001A (signed Feb. 2, 1981);
Canada (proposed treaty signed but not ratified), 1 \textsc{Tax Treaties} \textsuperscript{1} 1301 (Sept. 26, 1980);
Cyprus (signed but not ratified; sent back to White House for renegotiation), 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 2001A (Mar. 26, 1980);
Finland, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 2650 (ratified Dec. 30, 1970);
Iceland, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 3702 (ratified Nov. 26, 1975);
Israel, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 4203 (signed Nov. 20, 1975);
Jamaica, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 4386 (ratified Dec. 29, 1981);
 Korea, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 4803 (ratified Sept. 20, 1979);
Luxembourg, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 5303 (ratified Dec. 22, 1964);
Malta, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 5403 (ratified May 18, 1982);
Morocco, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 5603 (ratified Dec. 30, 1981);
Netherlands Antilles, 2 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 5856 (ratified Nov. 10, 1955);
New Zealand (proposed treaty signed but not ratified), 2 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 5902A (July 23, 1982);
Norway, 2 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 6053 (ratified Sept. 19, 1980);
Trinidad and Tobago, 2 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 7603 (ratified Dec. 30, 1970);
United Arab Republic, 2 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 8005 (ratified Dec. 1, 1981); and
United Kingdom, 2 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 8103A (ratified Mar. 25, 1980).

\textsuperscript{18} Treasury Department's Model Income Tax Treaty, 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 153 (May 17, 1977) [hereinafter cited as 1977 Model Treaty].
\textsuperscript{19} 1981 Draft Model Treaty, \textit{supra} note 16.
\textsuperscript{20} 1 \textsc{Tax Treaties} (CCH) \textsuperscript{1} 1014 (signed Feb. 2, 1981) [hereinafter cited as BVI Clause].
Treaty Shopping

ures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then, notwithstanding the provisions of Articles 10 (Dividends), 11 (Interest), or 12 (Royalties), that other State may tax such dividends, interest or royalties. For the purposes of this Article, the source of dividends, interest or royalties shall be determined in accordance with paragraph 3a), b), or c) of Article 23 (Relief from Double Taxation).21

This provision is found in the treaty drafts between the United States and both Brazil22 and Canada.23 It also forms the basis for Article 16 of the income tax treaty between the United States and the United Kingdom, which is discussed below. In that treaty, however, each country resorted to its own internal law for source definitions.

As is readily apparent, the 1977 Model Treaty provision is aimed at preventing a person from using a given treaty country corporation as a source converter. Put another way, the provision allows for strict scrutiny of reductions in the primary withholding tax rate. For example, under this provision, a U.S. dividend payable to a Canadian company and then paid out by the Canadian company as interest to a resident of a third country, will not be considered subject to a reduced U.S. withholding tax rate in the first instance, unless the Canadian corporation is at least 75% owned by Canadian residents and the dividend received is subject to substantially the same tax as any Canadian corporation.

It should be noted that the 1977 Model Treaty provision applies only to companies. Thus, entities not treated as corporate bodies for tax purposes may, presumably, be used as source converters and avoid the hurdle of both primary and secondary withholding.

B. 1981 Draft United States Treasury Model Treaty Provision

Article 16 of the 1981 Draft Model Treaty, entitled “Limitations on Benefits,” provides:

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless

a) more than 75 percent of the beneficial interest in such person is

22. 1 TAX TREATIES (CCH) ¶ 819 (signed Mar. 13, 1967).
23. 1 TAX TREATIES (CCH) ¶ 1317M (signed Sept. 26, 1980).
owned, directly or indirectly, by one or more individual residents of the first-mentioned Contracting State; and

b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are residents of a State other than a Contracting State and who are not citizens of the United States.

For the purposes of subparagraph a), a company that has substantial trading in its stock on a recognized exchange in a Contracting State is presumed to be owned by individual residents of that Contracting State.

2. Paragraph 1 shall not apply if it is determined that the acquisition or maintenance of such person and the conduct of its operations did not have as a principal purpose obtaining benefits under the Convention.

3. Any relief from tax provided by a Contracting State to a resident of the other Contracting State under the Convention shall be inapplicable to the extent that, under the law in force in that other State, the income to which the relief relates bears significantly lower tax than similar income arising from within that other State derived by residents of that other State.\(^24\)

This clause was the basis for the limitation on benefits clause, Article 17, which was introduced by protocol in the United States Income Tax Treaty with Jamaica.\(^25\)

The 1981 Draft Model Treaty provision provides essentially that a person, other than an individual, may not claim treaty benefits as a resident of a Contracting State unless: (a) that person is at least 75% owned, directly or indirectly, by individual residents of the Contracting State; and (b) the income of that person is not used to meet its liabilities to non-U.S. citizens and non-Contracting State residents. The first requirement is eliminated if there is substantial trading in the person’s stock on a recognized exchange in the Contracting State. The second requirement cannot be eliminated. Treaty benefits nonetheless will still not be available if the treaty gives the resident of a Contracting State a lower tax rate than it would have received under that State’s law without the treaty. It should be noted that the provision applies to entities other than corporations. This approach, nevertheless, leaves some questions unanswered.

First, the rules regarding attribution of ownership are unclear. Second, it appears that the use of a foreign corporation as a source


\(^25\) 1 TAX TREATIES (CCH) ¶ 4386Q (ratified Dec. 29, 1981).
Treaty Shopping converter is actually sanctioned, if a corporation is at least 75% owned by a resident of a Contracting State and if its income is not substantially used to meet liabilities to third-country residents. The meaning of "substantially" or "substantial use" and the policy behind allowing foreign corporations to be a source converter under any circumstances are unclear.

C. The BVI Clause

The BVI Clause is so named because of the attention it attracted when it was inserted in the draft income tax treaty between the United States and the British Virgin Islands. The clause provides:

A corporation which is a resident of a Covered Jurisdiction and which receives dividends, interest or royalties arising within the other Covered Jurisdiction may be taxed in that other Jurisdiction without regard to Articles 10 (Dividends), 11 (Interest) and 12 (Royalties) if:

(a) by reason of special measures the tax imposed by the first-mentioned Covered Jurisdiction on such corporation with respect to such dividends, interest or royalties is less than the tax imposed by the first-mentioned Covered Jurisdiction on corporate profits arising in the first-mentioned Covered Jurisdiction; and

(b) twenty-five percent or more of the capital of such corporation is held of record or is otherwise determined to be owned, directly or indirectly, by one or more individuals who are not residents of the first-mentioned Covered Jurisdiction.

The BVI Clause prompted strong opposition from public as well as private sources, and ultimately resulted in Treasury's requesting that the Senate Foreign Relations Committee withdraw consideration of the draft treaty with the British Virgin Islands and with Cyprus, which also contained this type of provision. These treaties were sent back to the White House for renegotiation at the President's request. The reason for the strong opposition was, essentially, that a jurisdiction which imposed a low tax on all its corporations could, under this provision, become a "tax haven" under this clause. Moreover, the internal law of the British Virgin Islands allowed a credit against its tax for taxes paid to another country pursuant to a tax treaty. Accordingly, some critics argued that the BVI Clause was a wholesale discount of the 30% U.S. withholding tax rate to 15%, because it was evident that the govern-

26. BVI Clause, supra note 20.
27. Id.
28. 1 TAX TREATIES (CCH) ¶ 2029 (signed Mar. 26, 1980).
ment of the British Virgin Islands was conscious of its advantages under U.S. tax laws and was not unwilling to market those advantages. Since agreement was not reached on a new treaty by June 30, 1982, the existing income tax treaty with the British Virgin Islands was terminated. See Treaties: Current Actions: Bilateral 82 DEP'T ST. BULL. 80 (1982).

It is interesting to note, however, that the potential for treaty shopping is not inherent in the quoted language. Rather, it is the combination of this provision with a low tax jurisdiction that results in possible abuse. Thus, there is some validity to Mr. Gordon's previously summarized analysis.

The assumption, however, that a treaty partner which has a high rate of internal tax is not a threat to the U.S. fisc is of limited validity. This assumption was prevalent in earlier U.S. treaties. First, amounts otherwise payable to the United States are diminished by virtue of the foreign tax credit. Second, the treaty partner's concepts of deductions and credits, which are not subject to withholding when paid to third country residents, might result in an effective tax rate far lower than the marginal rate of tax. An example of this phenomenon is the Netherlands, whose marginal rate of corporate tax and surtax is just under 40%, but to whom few sophisticated international tax investors pay more than 1% because of the well-known participation or jouissance exemption, by which affiliated corporations incorporated in the member states of the Kingdom of the Netherlands may receive dividends from one another virtually free of tax if a ruling has been secured.

The BVI Clause is also subject to being abused by the treaty partner. For example, a large United States oil corporation created a subsidiary which participated in a Korean joint venture. Upon termination of the venture, the U.S. subsidiary wished to avail itself of the capital gains provision in the Korean income tax treaty. The Korean government presently takes the position that the Korean income tax treaty, which has a BVI Clause that also covers capital gains, is

30. In fact, virtually identical language is used in U.S. treaties with Finland, 1 TAX TREATIES (CCH) ¶ 2678 (ratified Dec. 30, 1970), Iceland, 1 TAX TREATIES (CCH) ¶ 3730 (ratified Nov. 26, 1975), Israel, 1 TAX TREATIES (CCH) ¶ 4228 (signed Nov. 20, 1975), Korea, 1 TAX TREATIES (CCH) ¶ 4820 (ratified Sept. 20, 1979), Malta, 1 TAX TREATIES (CCH) ¶ 5419 (ratified May 18, 1982), Morocco, 1 TAX TREATIES (CCH) ¶ 5627 (ratified Dec. 30, 1981), Norway, 2 TAX TREATIES (CCH) ¶ 6073 (ratified Sept. 19, 1980), Trinidad and Tobago, 2 TAX TREATIES (CCH) ¶ 7624 (ratified Dec. 30, 1970), and the United Arab Republic, 2 TAX TREATIES (CCH) ¶ 8029 (ratified Dec. 1, 1981). Some of these treaties are over ten years old.

unavailable to the U.S. subsidiary on the grounds that: (a) since the U.S. capital gains tax is less than the general U.S. income tax on corporate profits, it constitutes a proscribed "special measure;" and (b) since the subsidiary is owned by a corporation, it is not owned by an individual resident of the United States. It is clear that this capital gains tax is not a special measure. It is also clear that the words "directly or indirectly" as applied to individual ownership of the U.S. subsidiary allow one to look through the parent to its individual shareholders. This situation, nonetheless, illustrates how the universal application of a treaty shopping provision can backfire.

D. Exemption of Specified Entities

The treaty with Luxembourg and the protocol with the Netherlands Antilles addressed treaty shopping and the use of entities as source converters by specifically exempting certain kinds of Luxembourg and Netherlands Antilles entities from treaty coverage.

The Luxembourg provision, which exempts from treaty benefits any corporation formed under the Luxembourg law of July 31, 1929, and Decree Law of December 27, 1937, is another example not only of the inclination to believe that a high tax rate treaty partner is not synonymous with tax avoidance, but also of the primary withholding approach to treaty shopping. Under Luxembourg law, companies electing to be subject to the foregoing statutes are exempt from Luxembourg tax if they do not engage in an active trade or business in Luxembourg. As the Memorandum of Joint Committee on Internal Revenue Taxation attached to the treaty indicates, the purpose of a treaty is to eliminate double taxation, not avoid all taxation, as would be the case if third-country residents formed a Luxembourg exempt holding corporation, which received interest or nonmineral royalties free of U.S. withholding tax.

E. Specifically Negotiated Clauses

These clauses appear in five income tax treaties between the United States and the United Kingdom, Jamaica, Argentina, New Zealand, and Australia.

32. 1 Tax Treaties (CCH) ¶ 5303 (ratified Dec. 22, 1964).
33. 2 Tax Treaties (CCH) ¶ 5856 (ratified Nov. 10, 1955).
34. 1 Tax Treaties (CCH) ¶ 5318 (ratified Dec. 22, 1964).
35. Id. at ¶ 5348.
1. The United Kingdom

The Investment or Holding Companies provision, article 16 of the income tax treaty between the United States and the United Kingdom,\(^\text{36}\) limits treaty benefits in accordance with a stock ownership test, similar to the 1977 Model Treaty provision, but utilizes a source test which depends upon the internal law of each of the treaty partners. Accordingly, a U.S. corporation is generally entitled to a treaty benefit under the income tax treaty between the United States and the United Kingdom, only if at least 20% of its gross income is from sources within the United States and at least 25% of its owners are U.S. citizens or residents. It should be noted that this provision sets forth no rules for determining ownership; does not appear to deny benefits if the articles relating to interest, dividends, and royalties do not apply; and in its delineation of the 80-20 company focuses also on the primary withholding level.

---

36. \(2\) Tax Treaties (CCH) ¶ 8103P (ratified Mar. 25, 1980). Article 16 states:

(1) The provisions of Articles 10 (Dividends), 11 (Interest) or 12 (Royalties) of this Convention shall not apply to a corporation which is a resident of one of the Contracting States and which derives dividends, interest, or royalties arising within the other Contracting State if:

(a)(i) the tax imposed on the corporation by the first-mentioned Contracting State in respect of such dividends, interest or royalties is substantially less than the tax generally imposed by that State on corporate profits; or

(ii) the corporation is a resident of the United States and receives more than eighty per cent of its gross income from sources outside the United States as determined by and for the period prescribed in sections 861(a)(1)(B) and (a)(2)(A) of the Internal Revenue Code of 1954, as they may be amended from time to time in minor respects so as not to affect their general principle; and

(b) 25 per cent or more of the capital of such corporation is owned, directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State and are not nationals of the United States.

(2) Nothing in this Article shall however prevent a claim under the provisions of Articles 10 (Dividends), 11 (Interest) or 12 (Royalties) by a United States corporation where more than 75 per cent of the capital of that corporation is directly or indirectly owned:

(a) by a United States corporation which receives 20 per cent or more of its gross income from sources within the United States as determined by and for the period described in sub-paragraph (1)(a)(ii) of this Article; or

(b) by a corporation (other than a United States corporation) which by reference to the provisions of section 283 of the United Kingdom Income and Corporation Taxes Act 1970 (as it may be amended from time to time without changing the general principle thereof) would not fail to be treated as a close company; or

(c) by a corporation which is a resident of the United Kingdom and in which more than 50 per cent of the voting power is controlled, directly or indirectly, by individuals who are residents of the United Kingdom.
2. Jamaica

Article 17 of the income tax treaty between the United States and Jamaica\(^{37}\) varies from the 1981 Draft Model Treaty provision, in that the portion of the 1981 Draft Model Treaty provision prohibiting the income of an entity to be used substantially to meet liabilities to residents of a third party country does not apply if those residents are subject to taxation in either the United States or Jamaica on their worldwide income by reason of citizenship. Another significant departure from the 1981 Draft Model Treaty provision is that specific tests are provided for determining whether or not a Jamaican corporation was formed for the purpose of obtaining treaty benefits. These tests include a showing that the treaty benefit is incidental to business operations.

\(^{37}\) 1 Tax Treaties (CCH) ¶ 4386Q (ratified Dec. 29, 1981). Article 17 states:

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless

(a) more than 75 percent of the beneficial interest in such person is owned, directly or indirectly, by one or more individual residents of the first-mentioned Contracting State; and

(b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are residents of a State other than a Contracting State, other than any such persons who are individuals subject to tax in a Contracting State on their worldwide income by reasons of citizenship.

A company that has substantial trading in its stock on a recognized exchange in a Contracting State is presumed, solely for purposes of subparagraph (a), to be owned by individual residents of the Contracting State in which the company is resident, as determined under Article 4 (Residence).

2. Paragraph 1 shall not apply if it is determined that the acquisition, ownership or maintenance of such person and the conduct of its operations did not have as a principal purpose obtaining benefits under this Convention.

3. The requirements of paragraph 2 are satisfied, in particular, where a company resident in Jamaica and owned by individual residents of third States derives income with respect to which the company claims United States tax benefits under this Convention, the company does not use such income in the manner described in paragraph 1(b) and:

(a) the company is engaged in business operations in Jamaica and the income with respect to which the company claims United States tax benefits is incidental to or derived in connection with the business operations in Jamaica; or

(b) the individuals owning the company are residents of countries that have income tax conventions in force with the United States and, pursuant to such conventions, the individuals would have been entitled to United States tax benefits the same as, or substantially similar to, the United States tax benefits claimed by the company under this Convention, had the individuals earned the income directly.

The provisions of this paragraph shall apply, mutatis mutandis, to a company resident in the United States and owned by residents of third States that derives income with respect to which Jamaican tax benefits are claimed under this Convention.
carried on in Jamaica or that the owners of the Jamaican corporation qualify for substantially similar treaty benefits under their income tax treaties with the United States. The introduction of such tests is quite helpful.

3. Argentina

The income tax treaty between the United States and Argentina was passed for ratification by the Senate Foreign Relations Committee with two reservations, one of which dealt with treaty shopping. The text of the reservation differs substantially from the 1981 Draft Model Treaty provision. It must be noted, however, that because the reservation does not include the portion of the 1981 Draft Model Treaty provision which prohibits the income of an entity to be used substantially to meet liabilities to residents of third party countries, it would theoretically be possible to organize an Aiken structure with the full protection of the Argentine treaty. If, as in Aiken, a corporation was organized in Argentina, whose major asset was a receivable and whose major liability was an identical payable, it would presumably not be of great concern to the ultimate taxpayer that the equity in the corporation was held by Argentine nationals. Accordingly, precisely the abuse that was disallowed in Aiken would expressly be permitted by the Argentine reservation. It is likely, however, that Argentina will not be perceived as a “tax haven” by the international investment community. Its treaty with the United States, nevertheless, will certainly be more favorable than that of its neighbors over the near term.

4. New Zealand

Article 16 of the income tax treaty between the United States and New Zealand was negotiated after the release by the Treasury De-
partment of the discussion draft of an alternative to the 1981 Draft Model Treaty provision on treaty shopping. It conforms more closely to the discussion draft in that it does not include the portion of the 1981 Draft Model Treaty provision which prohibits the income from an entity to be used substantially to meet liabilities to residents of third party countries. Additionally, the New Zealand article applies to all entities other than individuals and contains a provision that denies treaty benefits to income received by trustees, otherwise treated as income from a contracting state, where the income was derived in connection with a scheme to derive treaty benefits. No specific tests or safe harbors are mentioned either for this provision or for the provision that allows treaty benefits regardless of the ownership of the entity claiming them,

shall not be entitled under this Convention to relief from taxation in the other Contracting State unless:
(a) more than 75 percent of the beneficial interest in such person (or in the case of a company, more than 75 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
   (i) individuals who are residents of the United States;
   (ii) citizens of the United States;
   (iii) individuals who are residents of New Zealand;
   (iv) companies as described in subparagraph (b); and
   (v) the Contracting States; or
(b) it is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange; or
(c) the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as a principal purpose the purpose of obtaining benefits under the Convention.
2. For the purposes of paragraph 1(b), the term "a recognized stock exchange" means:
   (a) The NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934; and
   (b) the New Zealand Stock Exchange; and
   (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.
3. Where
   (a) income derived by a trustee is to be treated for the purposes of the Convention as income of a resident of a Contracting State; and
   (b) the trustee derived the income in connection with a scheme a principal purpose of which was to obtain a benefit under the Convention;
then, notwithstanding any other provision of the Convention, the Convention does not apply in relation to that income.
4. Before a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of this Article the competent authorities of the Contracting States shall consult each other.
40. See infra note 43 and accompanying text.
where the entity was not formed and operated for the purpose of obtaining treaty benefits. While regulations may rectify these concepts, one wonders whether an entity not formed for the purpose of obtaining treaty benefits, but so operated, would result in the entity's being able to obtain treaty benefits. Also of interest is the fact that any entity is entitled to treaty benefits, regardless of ownership or purpose, if its stock is regularly and substantially traded not only on the New Zealand stock markets or stock markets registered with the United States Securities Exchange Commission, but also on any other market agreed upon by the competent authorities. Finally, the article provides for competent authority consultation prior to the denial of treaty relief. One wonders if this provision may not be Treasury’s response to the Korean matter.41

5. Australia

The Australian income tax treaty with the United States, which also deals with limitation on benefits of article 16,42 is very similar to the New Zealand treaty both in its departure from the 1981 Draft

41. See supra text accompanying note 31.
42. 1 TAX TREATIES (CCH) ¶ 402Q (signed Aug. 6, 1982). That provision states:
   (1) A person (other than an individual) which is a resident of one of the Contracting States shall not be entitled under this Convention to relief from taxation in the other Contracting State unless:
      (a) more than 75 percent of the beneficial interest in such person (or in the case of a company, more than 75 percent of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more of:
         (i) individuals who are residents of the United States;
         (ii) citizens of the United States;
         (iii) individuals who are residents of Australia;
         (iv) companies as described in subparagraph (b); and
         (v) the Contracting States;
      (b) it is a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange in one of the Contracting States; or
      (c) the establishment, acquisition and maintenance of such person and the conduct of its operations did not have as one of its principal purposes the purpose of obtaining benefits under the Convention.
   (2) For the purposes of sub-paragraph (1)(b), the term “a recognized stock exchange” includes, in relation to the United States, the NASDAQ System owned by the National Association of Securities Dealers, Inc.
   (3) Where:
      (a) income derived by a trustee is to be treated for the purposes of this Convention as income of a resident of one of the Contracting States; and
      (b) the trustee derived the income in connection with a scheme a principal purpose of which was to obtain a benefit under this Convention; then, notwithstanding any other provision of this Convention, the Convention does not apply in relation to that income.
Treaty Shopping

Model Treaty provision and its similarity to the Treasury Department's discussion draft. The Australian provision, however, neither defines an Australian stock market on which shares of an entity must be traded to be exempted from ownership requirements nor provides for competent authority determination for such a market. Also, the Australian test for whether an entity was formed and operated for the purpose of obtaining treaty benefits speaks in terms of "one of its" principal purposes, rather than "a" principal purpose. Finally, the Australian provision does not require competent authority consultation prior to denial of treaty benefits, as does the New Zealand treaty. Such consultation, however, provides an opportunity for more careful and considered application of the provision.

VI. ADMINISTRATIVE DEVELOPMENTS

On January 14, 1982, the Treasury Department held a hearing on treaty approaches to treaty shopping. In preparation for this meeting, the Treasury Department issued a discussion draft of an alternative to the 1981 Draft Model Treaty provision. The purpose of the hearing

43. 1 TAX TREATIES (CCH) ¶ 152A (proposed June 16, 1981). That provision states:
1. A corporation which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State with respect to an item of income, gains or profits unless the corporation establishes that:
(a) its stock of any class is listed on an approved stock exchange in a Contracting State, or that it is wholly owned, directly or through one or more corporations each of which is a resident of a Contracting State, by a corporation the stock of which of any class is so listed; or
(b) it is not controlled by a person or persons who are not residents of a Contracting State, other than citizens of the United States; or
(c) it was not a principal purpose of the corporation or of the conduct of its business or of the acquisition or maintenance by it of the shareholding or other property from which the income in question is derived to obtain any of such benefits.
2. For the purposes of this Article:
(a) an approved stock exchange in means ;
(b) an approved stock exchange in the United States means the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for the purposes of the Securities Exchange Act of 1934;
(c) a person or persons shall be treated as having control of a corporation if under the income tax laws of the Contracting State in which the income arises the person or persons could be treated as having direct or indirect control of the corporation for any purpose;
(d) notwithstanding subparagraph (c) of this paragraph, a corporation is presumed to meet the requirements of subparagraph (b) of paragraph 1 of this Article if the corporation establishes that individuals who are:
(i) citizens of the United States;
was to compare and contrast the discussion draft, the 1981 Draft Model Treaty provision, the Jamaican provision, and the Argentine reservation. 44

At the January hearing, the Treasury Department announced that it would insist on anti-treaty shopping provisions in all of its treaties and that Treasury's goal would be to block third-party use of treaty country entities entirely. It was also noted that regulations applying I.R.C. § 385 to international situations would be used affirmatively by the Treasury, so that where an Aiken situation was being attempted, the notes of the treaty country corporation could be reclassified as stock. This application would be effective, principally, with respect to those treaties which imposed a higher withholding rate on dividends than on interest.

Also discussed at the January hearing was H.R. 4618 45 which sought to remove the 30% withholding tax from portfolio investments held by nonresident aliens. It was expected that the Treasury Department would seek to introduce an anti-treaty shopping provision similar to its discussion draft in its renegotiation of the income tax protocol with the Netherlands Antilles. Although it is not known what form of limitation on benefits provision Treasury has proposed to the government of the Netherlands Antilles, it should be noted that the discussion draft carves out an exception for Eurodollar financing securities (Paragraph 1.a.), which would make the proposal attractive to that government. The underlying rationale for this concession is a calculated risk on the passage of H.R. 4618. If that bill becomes law, the concession

(ii) residents of a Contracting State; or

(iii) residents of States that have income tax conventions in force with the Contracting State from which relief from taxation is claimed and such conventions provide relief from taxation not less than the relief from taxation claimed under this Convention;

own directly or indirectly more than 75 percent of the total combined voting power of all classes of the corporation's stock entitled to vote and more than 75 percent of the number of shares of each other class of the corporation's stock;

(e) a corporation is presumed to meet the requirements of subparagraph (c) of paragraph 1 of this Article, in particular, where:

(i) the reduction in tax claimed is not greater than the tax actually imposed by the Contracting State of which the corporation is resident;

(ii) the corporation is engaged in business operations in the Contracting State of which it is a resident and the relief from taxation claimed from the other Contracting State is with respect to income which is incidental to or derived in connection with such business.

44. See supra note 13.

45. Because of the Air Florida crash which occurred the previous day, access to the Treasury was limited; and although it took place, it was continued to March 9, 1982.
will not be particularly meaningful; if the bill does not become law, the Netherlands Antilles might obtain a favorable provision, sought by those large U.S. corporations which have international finance subsidiaries. While H.R. 4618 has not yet passed, and as of this writing, negotiations for a new treaty with the Netherlands Antilles appear to have broken down, the forthcoming Treasury regulations on the application of I.R.C. section 385 to international transactions may be of great interest.

The March 9, 1982 Treasury hearing was, in many senses, a replay of the January 14, 1982 hearing. While the private sector was more vociferous, Treasury announced its policy that treaty shopping provisions were to be universal, although not uniform. Thus, while every income tax treaty will, in future, contain a treaty shopping provision, as was the case with New Zealand and Australia, the particular provision will be negotiated.

Also of interest is § 342 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA),\textsuperscript{46} which provides:

> Not later than 2 years after the date of the enactment of this Act, the Secretary of Treasury or his delegate shall prescribe regulations establishing certification procedures, refund procedures, or other procedures which ensure that any benefit of any treaty relating to withholding of tax under sections 1441 and 1442 of the Internal Revenue Code of 1954 is available only to persons entitled to such benefit.\textsuperscript{47}

The regulations thus mandated will put an end to the self-certification method of obtaining treaty benefits at the primary withholding stage. Rather, 30% of all fixed or determinable, annual or periodic income paid to nonresident aliens and foreign corporations will be withheld at the source, unless otherwise excepted by such measures as H.R. 4618. Moreover, such persons will be obligated to file for refunds to the extent that they can show entitlement to treaty benefits. Such a procedure will quickly give definition to the various intent and control tests found in the limitation of benefits sections of the various treaties and in the 1981 Draft Model Treaty.

**VII. CONCLUSION**

The 1981 Draft Model Treaty provision is more specific and applies more broadly than the 1977 Model Treaty provision. Addition-


\textsuperscript{47} Id. at 635.
ally, the 1981 Draft Model Treaty provision is, at the same time, less
dependent on the internal law of its treaty partners than is either the
1977 Model Treaty provision or the BVI Clause. Moreover, the use of
a treaty jurisdiction as a source converter is severely limited by the

The discussion draft proposed by the Treasury Department ap-
pears less restrictive than the 1981 Draft Model Treaty provision. The
discussion draft applies only to corporations, rather than to "persons,
thus including other entities, such as trusts and partnerships. In addi-
tion, listing any class of stock on a recognized exchange suffices in aid-
ing exemption from the application of the discussion draft provision,
without the necessity of "substantial trading." As noted above, the dis-
cussion draft maintains the status quo of international finance subsidi-
daries. It should also be noted that the discussion draft provision does
not apply to losses and sets forth objective tests for determining
whether a corporation is established for purposes of treaty shopping.
The tests contained in the discussion draft appear slightly more liberal
than those set forth in the Jamaica treaty. The discussion draft addi-
tionally appears to provide for determination of eligibility for treaty
benefits separately for each item of income, rather than on an all-or-
nothing basis. It also appears to move away from using 75% ownership
as a limitation on the control exception, while expanding the sanc-
tioned control group to include residents of third countries which have
equivalent treaty provisions. Finally, the discussion draft appears to
move away from the position that any tax reduction results automatic-
ally in the loss of treaty benefits.

Accordingly, from the point of view of the Treasury Department,
the 1981 Draft Model Treaty is an advance over the 1977 provisions,
and the discussion draft appears to be an advance over the 1981 Draft
Model Treaty provision. It remains to be seen, however, whether an
anti-treaty shopping provision would enhance the position of the
United States in attracting foreign capital or, indeed, whether U.S.
treaty partners consider treaty shopping to be as much of an abuse as
does the Treasury Department. Finally, to the extent that the 30% U.S.
withholding tax is reduced, eliminated, or limited in its application as a
result of legislation such as H.R. 4618, the dichotomy in policy which
gives rise to treaty shopping may become largely resolved. Domestic
policy considerations of treating the taxation of resident and nonresi-
dent portfolio investment equitably, however, will have to be consid-
ered. Given the fact that TEFRA introduced withholding on domestic
interest, the legislative climate appears inhospitable for a bill aimed at eliminating withholding on interest earned by nonresident aliens.

Both the 1981 Draft Model Treaty provision and the discussion draft require a fair amount of discretion in their application. Since effective enforcement in the international arena is difficult at best, there is a considerable virtue to having a treaty shopping provision be self-executing. Both provisions include an exception where obtaining treaty benefits is not "a principal purpose." This concept appears to be an invitation to the kind of morass that permeates the application of section 367. Additionally, both provisions take a presumptive rather than a "safe harbor" approach, a fact which also detracts from self-execution. This problem is especially evident in paragraph 2(d) of the discussion draft. Finally, the concept of "control" is also not self-executing, in that there may be many problems under local law which would preclude definitive determination of whether one company was controlled by another. This fact would be a burden on both the administration of and compliance with the provision. This point may be well illustrated by reference to U.S. law, which contains a variety of percentage levels to determine control; a more generalized concept of control, as evidenced by section 482; and provisions relating to distinction between debt and equity, as reflected in section 385. This problem argues for a safe harbor definition of control, perhaps along the lines of Subpart F. It is hoped that the problem of self-execution can be addressed in the regulations project mandated by section 342 of TEFRA, discussed above.

In conclusion, one is forced to question the usefulness of a prototypical treaty shopping provision. Even apart from the possibility that, as in the Korean case, a universal treaty shopping provision can have bizarre consequences, since a model treaty is a source for development of reliable treaty interpretation, it can be argued that a model treaty should concern itself with subjects covered in a uniform way. Treaty shopping is neither universal, nor are its particular methods uniform with respect to so-called tax havens. To the extent that treaty shopping is believed to be an abuse, it must be perceived to arise from a variety of nonuniform sources, such as exemption from income tax in the source country or an indirect foreign tax credit, such as that found in section 902.

A comprehensive denial of treaty benefits to third-party ownership creates two sets of conflicts: equity versus complexity, and subjective intent versus objective result. For example, as noted in the ABA Tax Section's comment on the 1981 Draft Model Treaty, a German com-
pany may well have substantial business reasons for investing in the United States through its active Dutch subsidiary rather than directly; but it is not clear whether the United States should permit that investment to enjoy a 5% withholding rate rather than the 15% rate which Germany applies to subsidiaries of United States companies.

In short, the prevention of improper use of a tax treaty is inextricably connected with a definition of those activities which constitute its improper use. The consequence of adopting the rather reasonable position that third-party use of treaty country corporations is possibly abusive is a rather comprehensive article 16, limiting most treaty benefits which would have been enjoyed by a third-country national had the activity in question been conducted directly rather than through a treaty jurisdiction. Since a serious challenge to the proper use of treaties has only recently begun, however, many difficulties and unintended results created by a broad article 16 remain to be discovered. Accordingly, it seems a useful approach, taken in the New Zealand treaty, but regrettably not in the Australian treaty, to permit an administrative determination by competent authorities that third-country ownership does not justify denial of treaty benefits.

For example, one relevant factor in such a competent authority determination might be the level of taxation in the residence country. Third country nationals would have little incentive to form a corporation in a treaty country which imposed just as much tax on the income as the United States would have imposed had they invested directly. In determining the level of residence country tax, however, several factors should be taken into account. These factors include the rate; the income base; and the question of what constitutes "special measures," such as capital gains, accelerated depreciation and credits, or other allowances.

Although the requirement of a competent authority determination may create complexity and uncertainty, in view of the lack of uniformity and universality in treaty shopping, any automatic set of rules will prove unsatisfactory and unfair in some cases. In order to eliminate undue burdens, the treaty partners could give assurance that such competent authority determinations would be given expedited treatment. Perhaps competent authority regulations could provide that the treaty benefits would automatically apply if the tax authorities did find to the contrary within a specified period.

1. Material shown in ordinary type appears in both.

2. MATERIAL SHOWN IN BLOCK CAPITALS APPEARS IN THE 1977 MODEL BUT NOT IN THE 1981 PROPOSED DRAFT.

3. Material which is in italics appears in the 1981 proposed draft but not in the 1977 model.

Convention Between THE GOVERNMENT OF The United States of America and THE GOVERNMENT OF . . . . For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income And Capital

Article 1
PERSONAL General Scope

1. EXCEPT AS OTHERWISE PROVIDED IN THIS CONVENTION, This convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.

2. THIS The Convention shall not restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded.
   (a) by the laws of either Contracting State; or
   (b) by any other agreement between the Contracting States.

3. Notwithstanding any provision of THIS the Convention except paragraph 4, OF THIS ARTICLE, a Contracting State may tax its residents (as determined under Article 4 (FISCAL DOMICILE) (Residence)), and by reason of citizenship may tax its citizens, as if THIS the Convention had not come into effect. For this purpose the term “citizen” shall include a former citizen whose loss of citi-

* The method of comparison is adapted from 3 R. RHOADES & M. LANGER, INCOME TAXATION OF FOREIGN RELATED TRANSACTIONS (1971).
zenship had as one of its principal purposes the avoidance of income tax, but only for a period of 10 years following such loss.

4. The provisions of paragraph 3 shall not affect
   (a) the benefits conferred by a Contracting State under paragraph 2 of Article 9 (Associated Enterprises), under paragraphs 1b and 4 of Article 18 (Pensions, Annuities, Alimony and Child Support ETC.), and under Articles 23 (Relief From Double Taxation), 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure); and
   (b) the benefits conferred by a Contracting State under Articles 19 (Government Service), 20 (Students and Trainees) and 27 (Effect of Convention on Diplomatic Agents and Consular Officers, Domestic Laws, and Other Treaties), upon individuals who are neither citizens of, nor have immigrant status in, that State.

Article 2
Taxes Covered

1. THIS CONVENTION SHALL APPLY TO TAXES ON INCOME AND ON CAPITAL IMPOSED ON BEHALF OF A CONTRACTING STATE.

2. i. The existing taxes to which this Convention shall apply are
   (a) In the United States: the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax, the personal holding company tax, and social security taxes), and the excise taxes imposed on insurance premiums paid to foreign insurers and with respect to private foundations, BUT EXCLUDING THE ACCUMULATED EARNINGS TAX AND THE PERSONAL HOLDING COMPANY TAX. The Convention shall, however, apply to the excise taxes imposed on insurance premiums paid to foreign insurers only to the extent that the risks covered by such premiums are not reinsured with a person not entitled to the benefits of this or any other convention which applies to these taxes;
   (b) In ________________

3. 2. The Convention shall apply also to any identical or substantially similar taxes which are imposed BY A CONTRACTING STATE after the date of signature of THIS the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting STATES State shall notify each other of any significant changes which have been made in their respective taxation laws and
SHALL NOTIFY EACH OTHER of any official published material concerning the application of THIS the Convention, including explanations, regulations, rulings, or judicial decisions.

4. FOR THE PURPOSE OF ARTICLE 24 (NON-DISCRIMINATION), THIS CONVENTION SHALL ALSO APPLY TO TAXES OF EVERY KIND AND DESCRIPTION IMPOSED BY A CONTRACTING STATE OR A POLITICAL SUBDIVISION OR LOCAL AUTHORITY THEREOF. FOR THE PURPOSE OF ARTICLE 26 (EXCHANGE OF INFORMATION AND ADMINISTRATIVE ASSISTANCE), THIS CONVENTION SHALL ALSO APPLY TO TAXES OF EVERY KIND IMPOSED BY A CONTRACTING STATE.

Article 3
General Definitions

1. For the purpose of this Convention, unless the context otherwise requires
   (a) the term “person” includes an individual, an estate, a trust, a partnership, a company, an estate, a trust, and any other body of persons;
   (b) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
   (c) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
   (d) the term “international traffic” means any transport by a ship or aircraft, except WHERE when such transport is solely between places in the other Contracting State.
   (e) the term “competent authority” means
      (i) in the United States: the Secretary of the Treasury or his delegate, and
      (ii) in __________: ____________________________;
   (f) the term “United States” means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;
   (g) the term __________ means________

2. As regards the application of THIS the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant AND SUBJECT to the provisions of Article 25
(Mutual Agreement Procedure), have the meaning which it has under the laws of THAT the State concerning the taxes to which THIS the Convention applies.

Article 4
RESIDENT Residence

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, citizenship, place of management, place of incorporation, or any other criterion of a similar nature, provided, however, that

(a) this term does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein; and

(b) in the case of income derived or paid by a partnership, estate, or trust, this term applies only to the extent that the income derived by such partnership, estate, or trust is subject to tax in that State as the income of a resident OF THAT STATE, either in its hands or in the hands of its partners or beneficiaries.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his OR HER status shall be determined as follows:

(a) THE INDIVIDUAL he shall be deemed to be a resident of the State in which he OR SHE has a permanent home available to him; if SUCH INDIVIDUAL he has a permanent home available to him in both States, OR IN NEITHER STATE, he OR SHE shall be deemed to be a resident of the State with which his OR HER personal and economic relations are closer (center of vital interests);

(b) If the State in which THE INDIVIDUAL'S he has his center of vital interests cannot be determined, OR if he does not have a permanent home available to him in either State, he OR SHE shall be deemed to be a resident of the State in which he OR SHE has an habitual abode;

(c) If THE INDIVIDUAL he has an habitual abode in both States or in neither of them, he OR SHE shall be deemed to be a resident of the State of which he OR SHE is a national;

(d) If THE INDIVIDUAL he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
3. Where by reason of the provisions of paragraph 1 a company is a resident of both Contracting States, then if it is created OR ORGANIZED under the laws of a Contracting State or a political subdivision thereof, it shall be TREATED AS deemed to be a resident of that State.

4. Where by reason of the provisions of paragraph 1 a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall BY MUTUAL AGREEMENT ENDEAVOR TO settle the question by mutual agreement and TO determine the mode of application of the Convention to such person.

5. FOR PURPOSES OF THIS CONVENTION, AN INDIVIDUAL WHO IS A NATIONAL OF A CONTRACTING STATE SHALL ALSO BE DEEMED TO BE A RESIDENT OF THAT STATE IF (a) THE INDIVIDUAL IS AN EMPLOYEE OF THAT STATE OR AN INSTRUMENTALITY THEREOF IN THE OTHER CONTRACTING STATE OR IN A THIRD STATE; (b) THE INDIVIDUAL IS ENGAGED IN THE PERFORMANCE OF GOVERNMENTAL FUNCTIONS FOR THE FIRST-MENTIONED STATE; AND (c) THE INDIVIDUAL IS SUBJECTED IN THE FIRST-MENTIONED STATE TO THE SAME OBLIGATIONS IN RESPECT OF TAXES ON INCOME AS ARE RESIDENTS OF THE FIRST-MENTIONED STATE. THE SPOUSE AND MINOR CHILDREN RESIDING WITH THE EMPLOYEE AND SUBJECT TO THE REQUIREMENTS OF (c) ABOVE SHALL ALSO BE DEEMED TO BE RESIDENTS OF THE FIRST-MENTIONED STATE.

6. WHERE UNDER ANY PROVISION OF THIS CONVENTION INCOME ARISING IN ONE OF THE CONTRACTING STATES IS RELIEVED FROM TAX IN THAT CONTRACTING STATE AND, UNDER THE LAW IN FORCE IN THE OTHER CONTRACTING STATE A PERSON, IN RESPECT OF THE SAID INCOME, IS SUBJECT TO TAX BY REFERENCE TO THE AMOUNT THEREOF WHICH IS REMITTED TO OR RECEIVED IN THAT OTHER CONTRACTING STATE AND NOT BY REFERENCE TO THE FULL AMOUNT THEREOF, THEN THE RELIEF TO BE ALLOWED UNDER THIS CONVENTION IN THE FIRST-MENTIONED CONTRACTING STATE SHALL APPLY ONLY TO SO MUCH OF THE INCOME AS IS REMITTED TO OR RE-
Article 5
Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" SHALL INCLUDE includes especially:

   (a) a place of management;

   (A)(b) a branch;

   (B)(c) an office;

   (C)(d) a factory;

   (D)(e) a workshop; and

   (E)(f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

3. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of DEVELOPMENT EXPLOITATION of natural resources, constitutes a permanent establishment only if it lasts more than 24 twelve months.

4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include

   (a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

   (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

   (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

   (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

   (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

   (f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs (a) to (e) OF THIS PARAGRAPH.
5. Notwithstanding the provisions of paragraphs 1 and 2, where a person—other than an agent of an independent status to whom paragraph 6 applies—is acting on behalf of an enterprise and has and habitually exercises in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent, or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6
Income From IMMOVABLE PROPERTY (REAL PROPERTY)

Real Property (Immovable Property)

1. Income derived by a resident of a Contracting State from IMMOVABLE real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

2. The term “IMMOVABLE real property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. THE TERM SHALL IN ANY CASE INCLUDE PROPERTY ACCESSORY TO IMMOVABLE PROPERTY, LIVESTOCK AND EQUIPMENT USED IN AGRICULTURE AND FORESTRY, RIGHTS TO WHICH THE PROVISIONS OF GENERAL LAW RESPECTING LANDED PROPERTY APPLY, USUFRUCT OF IMMOVABLE PROPERTY AND RIGHTS TO VARIABLE OR FIXED PAYMENTS AS CONSIDERATION FOR THE WORKING OF, OR THE RIGHT TO WORK, MINERAL DEPOSITS, SOURCES AND
OTHER NATURAL RESOURCES; SHIPS, BOATS AND AIRCRAFT SHALL NOT BE REGARDED AS IMMOVABLE PROPERTY.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of IMMOVABLE real property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from IMMOVABLE real property of an enterprise and to income from IMMOVABLE real property used for the performance of independent personal services.

5. A resident of a Contracting State who is SUBJECT liable to tax in the other Contracting State on income from IMMOVABLE real property situated in the other Contracting State may elect for any taxable year to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in such other State. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authorities of the two Contracting States, pursuant to a request by the taxpayer made to the competent authority of the Contracting State in which the taxpayer is a resident, agree to terminate the election.

Article 7

Business Profits

1. The business profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the business profits 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.

3. In determining the business profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred
for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest, and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of THE PRECEDING PARAGRAPHS, this Convention, the business profits to be attributed to the permanent establishment shall include only the profits derived from the assets or activities of the permanent establishment and shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where business profits include items of income which are dealt with separately in other Articles of THIS the Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of THIS the Convention, the term "business profits" means income derived from any trade or business WHETHER CARRIED ON BY AN INDIVIDUAL, COMPANY OR ANY OTHER PERSON, OR GROUP OF PERSONS, including the rental of tangible personal (MOVABLE) property, and the rental or licensing of cinematographic films or films or tapes used for radio or television broadcasting.

Article 8
Shipping and Air Transport

1. Profits of an enterprise of a Contracting State from the operation IN INTERNATIONAL TRAFFIC of ships or aircraft in international traffic shall be taxable only in that State.

2. For purposes of this Article, profits from the operation IN INTERNATIONAL TRAFFIC of ships or aircraft in international traffic include profits derived from the rental ON A FULL OR BAREBOAT BASIS of ships or aircraft if such ships or aircraft are operated in international traffic by the lessee or if such rental profits are incidental to other profits described in paragraph 1.

3. Profits of an enterprise of a Contracting State from the use, mainte-
nance or rental of containers (including trailers, barges and related equipment for the transport of containers) used FOR THE TRANSPORT in international traffic OF GOODS OR MERCHANDISE shall be taxable only in that State.

4. The provisions of paragraph[s] 1 and 3 shall also apply to profits from THE participation in a pool, a joint business or an international operating agency.

Article 9
Associated Enterprises

1. Where

(a) 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

(b) 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, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which WOULD, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be HAD paid to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

3. The provisions of paragraph 1 shall not limit any provisions of the law of either Contracting State which permit the distribution, apportionment, or allocation of income, deductions, credits, or allowances between persons; whether or not residents of a Contracting State, owned or controlled directly or indirectly by the same inter-
Treaty Shopping

ests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any such persons.

Article 10
Dividends
1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed
   (a) 5 percent of the gross amount of the dividends if the beneficial owner is a company (OTHER THAN A PARTNERSHIP) which owns, DIRECTLY OR INDIRECTLY, at least 10 percent of the voting stock of the company paying the dividends;
   (b) 15 percent of the gross amount of the dividends in all other cases. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the state of which the company making the distribution is a resident.

4. The provisions of paragraph[s] 1 AND 2 shall not apply if the RECIPIENT beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and THE HOLDING IN RESPECT OF WHICH the dividends are PAID IS EFFECTIVELY CONNECTED WITH attributable to such permanent establishment or fixed base. In such a case, the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

5. WHERE A COMPANY IS A RESIDENT OF a Contracting State, THE OTHER CONTRACTING STATE may not impose any tax
on the dividends paid by a company which is not a resident of that State, except insofar as
(a) such dividends are paid to a resident of that other State,
(b) the holding in respect of which the dividends are paid is effectively connected with attributable to a permanent establishment or a fixed base situated in that other State, or
(c) such dividends are paid out of profits attributable to one or more permanent establishments which of such company had in that other State in that State, provided that such profits the gross income of the company attributable to such permanent establishment constituted at least 50 percent of such the company’s gross income from all sources.
Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such the tax shall be subject to the limitations of paragraph 2.

Article 11
Interest
1. Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.
2. The term “interest” as used in this the Convention means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums or prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this the Convention.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.
4. Interest shall be deemed to arise in a Contracting State when the
payer is that State itself, or a political subdivision, a local authority, or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

5. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of THIS Convention.

6. A Contracting State may not impose any tax on interest paid by a resident of the other Contracting State, except insofar as
(a) SUCH interest is paid to a resident of the first-mentioned State;
(b) THE DEBT CLAIM IN RESPECT OF WHICH the interest is PAID IS EFFECTIVELY CONNECTED WITH attributable to A permanent establishment or a fixed base situated in the first-mentioned State; or
(c) SUCH interest arises in the first-mentioned State and is not paid to a resident of SUCH the other State.

Article 12
Royalties

1. Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

2. The term "royalties" as used in this ARTICLE Convention means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (but not including cinematographic films or films or tapes used for radio or television broadcasting), any patent, TRADE MARK trademark, design or model, plan, secret formula or process, or other like right or property, or for information concerning indus-
trial, commercial or scientific experience. The term "royalties" also includes gains derived from the alienation of any such right or property which are contingent on the productivity, use or disposition thereof.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State, in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and THE RIGHT OR PROPERTY IN RESPECT OF WHICH the royalties are PAID IS EFFECTIVELY CONNECTED WITH attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and THE PERSON DERIVING THE ROYALTIES the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case the excess part of the payments shall remain taxable according to the law[s] of each Contracting State, due regard being had to the other provisions of THIS the Convention.

Article 13
CAPITAL Gains

1. Gains derived by a resident of a Contracting State from the alienation of IMMOVABLE real property referred to in Article 6 (Income From Real Property (Immovable Property)) and situated in the other Contracting State may be taxed in that State.

2. Gains from the alienation of
    (a) shares of the stock of a company (whether or not a resident of a Contracting State) the property of which consists principally of real property situated in a Contracting State; or
    (b) an interest in a partnership, trust, or estate (whether or not a resident of a Contracting State) to the extent attributable to real property situated in a Contracting State may be taxed in that State. For the purposes of this paragraph,
the term "real property" includes the shares of a company referred to in subparagraph a (or an interest in a partnership, trust, or estate referred to in subparagraph b).

2. Gains from the alienation of MOBILE PROPERTY FORMING PART OF THE BUSINESS PROPERTY OF personal property which is attributable to a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, or of MOBILE PROPERTY PERTAINING which are attributable to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, INCLUDING SUCH AND gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

3. Gains derived by an enterprise of a Contracting State from the alienation of ships, aircraft or containers operated by such enterprise in international traffic shall be taxable only in that State, AND gains described in Article 12 (Royalties) shall be taxable only in accordance with the provisions of Article 12.

4. Gains from the alienation of any property other than THAT property referred to in paragraphs 1, 2, AND 3, 1 through 5 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14
Independent Personal Services

Income derived by an individual who is a resident of a Contracting State from the performance of personal services in an independent capacity shall be taxable only in that State unless such services are performed in the other Contracting State and

(A) THE INDIVIDUAL IS PRESENT IN THAT OTHER STATE FOR A PERIOD OR PERIODS AGGREGATING MORE THAN 183 DAYS IN THE TAXABLE YEAR CONCERNED, OR

(B) THE INDIVIDUAL HAS the income is attributable to a fixed base regularly available to HIM the individual in that other State for the purpose of performing his activities, BUT ONLY SO MUCH OF THE INCOME AS IS ATTRIBUTABLE TO THAT FIXED BASE MAY BE TAXED IN SUCH OTHER STATE.
Article 15
Dependent Personal Services

1. Subject to the provisions of Articles 18 (Pensions, Annuities, Alimony, and Child Support ETC.) and 19 (Government Service), salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if
   (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned;
   (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
   (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment as a member of the regular complement of a ship or aircraft operated by an enterprise of a Contracting State in international traffic may be taxed only in that Contracting State.

Article 16
INVESTMENT OR HOLDING COMPANIES

Limitation on Benefits

If 25 percent or more of the capital of a company which is a resident of a Contracting State is owned directly or indirectly by individuals who are not residents of that State, and if by reason of special measures the tax imposed by that State on that company with respect to dividends, interest or royalties arising in the other Contracting State is substantially less than the tax generally imposed by the first-mentioned State on corporate business profits, then, notwithstanding the provisions of Articles 10 (Dividends),
11 (INTEREST), OR 12 (ROYALTIES), THAT OTHER STATE MAY TAX SUCH DIVIDENDS, INTEREST OR ROYALTIES. FOR THE PURPOSES OF THIS ARTICLE, THE SOURCE OF DIVIDENDS, INTEREST OR ROYALTIES SHALL BE DETERMINED IN ACCORDANCE WITH PARAGRAPH 3(a), (b), OR (c) OF ARTICLE 23 (RELIEF FROM DOUBLE TAXATION).

1. A person (other than an individual) which is a resident of a Contracting State shall not be entitled under this Convention to relief from taxation in the other Contracting State unless

(a) more than 75 percent of the beneficial interest in such person is owned, directly or indirectly, by one or more individual residents of the first-mentioned Contracting State; and

(b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are residents of a State other than a Contracting State and who are not citizens of the United States.

For the purposes of subparagraph (a), a company that has substantial trading in its stock on a recognized exchange in a Contracting State is presumed to be owned by individual residents of that Contracting State.

2. Paragraph 1 shall not apply if it is determined that the acquisition or maintenance of such person and the conduct of its operations did not have as a principal purpose obtaining benefits under the Convention.

3. Any relief from tax provided by a Contracting State to a resident of the other Contracting State under the Convention shall be inapplicable to the extent that, under the law in force in that other State, the income to which the relief relates bears significantly lower tax than similar income arising within that other State derived by residents of that other State.

Article 17

ArtistEs and Athletes

1. Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services), income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artistE, or a musician, or as an athelete (sic), from his OR HER personal activities as such exercised in the other Contracting State, may be taxed in that other State, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him OR
HER or borne on his OR HER behalf, from such activities DO does not exceed FIFTEEN twenty thousand United States dollars ($15,000) ($20,000) or its equivalent in _____ for the taxable year concerned.

2. Where income in respect of activities exercised by an entertainer or an athlete in his OR HER capacity as such accrues not to THAT the entertainer or athlete but to another person, that income of that other person may, notwithstanding the provisions of Articles 7 (Business Profits), and 14 (Independent Personal Services), AND 15 (DEPENDENT PERSONAL SERVICES), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised [.] FOR PURPOSES OF THE PRECEDING SENTENCE, INCOME OF AN ENTERTAINER OR ATHLETE SHALL BE DEEMED NOT TO ACCRUE TO ANOTHER PERSON IF, unless it is established that neither the entertainer or athlete, nor persons related thereto participated directly or indirectly in the profits of such that other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Article 18
Pensions, ETC. Annuities, Alimony and Child Support

1. Subject to the provisions OF PARAGRAPH 2 of Article 19 (Government Service),

(a) pensions and other similar remuneration BENEFICIALLY DERIVED derived and beneficially owed by a resident of a Contracting State in consideration of past employment shall be taxable only in that State; and

(b) social security PAYMENTS benefits and other public pensions paid by a Contracting State to AN INDIVIDUAL WHO IS a resident of the other Contracting State or a citizen of the United States shall be taxable only in the first-mentioned CONTRACTING State.

2. Annuities BENEFICIALLY DERIVED derived and beneficially owed by a resident of a Contracting State shall be taxable only in that State. The term "annuities" as used in this paragraph means a stated sum paid periodically at stated times DURING LIFE OR during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Contracting State BY A RESI-
DENT OF THE OTHER CONTRACTING STATE SHALL BE EXEMPT FROM TAX IN THE OTHER CONTRACTING STATE. shall be taxable only in that State. The term “alimony” as used in this paragraph means 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.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, paid by a resident of one of the Contracting States to a resident of the other Contracting State, shall be EXEMPT FROM TAX IN BOTH CONTRACTING STATES. taxable only in the first-mentioned State.

Article 19

Government Service

1. (a) REMUNERATION, OTHER THAN A PENSION, PAID BY A CONTRACTING STATE OR A POLITICAL SUBDIVISION OR A LOCAL AUTHORITY THEREOF TO AN INDIVIDUAL IN RESPECT OF SERVICES RENDERED TO THAT STATE OR SUBDIVISION OR AUTHORITY SHALL BE TAXABLE ONLY IN THAT STATE.

(b) HOWEVER, SUCH REMUNERATION SHALL BE TAXABLE ONLY IN THE OTHER CONTRACTING STATE IF THE SERVICES ARE RENDERED IN THAT STATE AND THE INDIVIDUAL IS A RESIDENT OF THAT STATE WHO:

(i) IS A NATIONAL OF THAT STATE; OR
(ii) DID NOT BECOME A RESIDENT OF THAT STATE SOLELY FOR THE PURPOSE OF RENDERING THE SERVICES: PROVIDED THAT THE PROVISIONS OF CLAUSE (ii) SHALL NOT APPLY TO THE SPOUSE OR DEPENDENT CHILDREN OF AN INDIVIDUAL WHO IS RECEIVING REMUNERATION TO WHICH THE PROVISIONS OF SUBPARA-GRAPH (a) APPLY AND WHO DOES NOT COME WITHIN THE TERMS OF CLAUSE (i) or (ii).

2. (a) ANY PENSION PAID BY, OR OUT OF FUNDS CREATED BY, A CONTRACTING STATE OR A POLITICAL SUBDIVISION OR A LOCAL AUTHORITY THEREOF TO AN INDIVIDUAL IN RESPECT OF SERVICES RENDERED
TO THAT STATE OR SUBDIVISION OR AUTHORITY SHALL BE TAXABLE ONLY IN THAT STATE.

(b) HOWEVER, SUCH PENSION SHALL BE TAXABLE ONLY IN THE OTHER CONTRACTING STATE IF THE INDIVIDUAL IS A RESIDENT OF, AND A NATIONAL OF, THAT STATE.

3. THE PROVISIONS OF ARTICLES 14 (INDEPENDENT PERSONAL SERVICE), 15 (DEPENDENT PERSONAL SERVICE), 17 (ARTISTES AND ATHLETES), AND 18 (PENSIONS, ETC.) SHALL APPLY TO REMUNERATION AND PENSIONS IN RESPECT OF SERVICES RENDERED IN CONNECTION WITH A BUSINESS CARRIED ON BY A CONTRACTING STATE OR A POLITICAL SUBDIVISION OR A LOCAL AUTHORITY THEREOF.

Remuneration, including a pension, paid from the public funds of a Contracting State or a political subdivision or local authority thereof to a citizen of that State in respect of services rendered in the discharge of functions of a governmental nature shall be taxable only in that State. However, the provisions of Article 14 (Independent Personal Services), Article 15 (Dependent Personal Services) or Article 17 (Artistes and Athletes), as the case may be, shall apply, and the preceding sentence shall not apply, to remuneration paid in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof.

Article 20

Students and Trainees

1. Payments WHICH A STUDENT, APPRENTICE OR BUSINESS TRAINEE WHO IS OR WAS IMMEDIATELY BEFORE VISITING A CONTRACTING STATE A RESIDENT OF THE OTHER CONTRACTING STATE AND WHO IS PRESENT IN THE FIRST-MENTIONED STATE FOR THE PURPOSE OF HIS OR HER FULL-TIME EDUCATION OR TRAINING RECEIVES received for the purpose of HIS OR HER maintenance, education or training by a student, apprentice, or business trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State for the purpose of his full-time education or training shall not be taxed in that State provided that such payments arise FROM SOURCES outside that State.

2. AN INDIVIDUAL TO WHOM PARAGRAPH 1 APPLIES MAY
ELECT TO BE TREATED FOR TAX PURPOSES AS A RESIDENT OF THE FIRST-MENTIONED STATE. THE ELECTION SHALL APPLY TO ALL PERIODS DURING THE TAXABLE YEAR OF THE ELECTION AND SUBSEQUENT TAXABLE YEARS DURING WHICH THE INDIVIDUAL QUALIFIES UNDER PARAGRAPH 1, AND MAY NOT BE REVOKED EXCEPT WITH THE CONSENT OF THE COMPETENT AUTHORITY OF THAT STATE.

Article 21

Other Income

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income other than income from IMMOVABLE real property as defined in paragraph 2 of Article 6 (Income From Real Property (Immovable Property)), if the PERSON DERIVING beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and THE RIGHT OR PROPERTY IN RESPECT OF WHICH the income is PAID IS EFFECTIVELY CONNECTED WITH attributable to such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits), or Article 14 (Independent Personal Services), OR ARTICLE 17 (ARTISTES AND ATHLETES) as the case may be, shall apply.

Article 22

Capital

1. Capital represented by IMMOVABLE real property referred to in Article 6 (Income From Real Property (Immovable Property)), owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by MOVABLE personal property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by MOVABLE personal property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting
State for the purpose of performing independent personal services may be taxed in that other State.

3. Capital represented by ships, AND aircraft and containers OPERATED, owned by a resident of a Contracting State and operated in international traffic, MOVABLE by personal property pertaining to the operation of such ships, AND aircraft, and containers shall be taxable only in that State.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23
Relief From Double Taxation

1. IN THE CASE OF THE UNITED STATES, DOUBLE TAXATION SHALL BE AVOIDED AS FOLLOWS: In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow to a resident or citizen of the United States as a credit against the United States tax on income OR CAPITAL THE APPROPRIATE AMOUNT OF TAX PAID TO__________ AND,

(a) the income tax paid to . . . by or on behalf of such citizen or resident; and

(b) in the case of a United States company owning at least 10 percent of the voting stock of a company which is a resident of _________and from which IT the United States Company receives dividends, IN ANY TAXABLE YEAR, THE UNITED STATES SHALL ALLOW AS A CREDIT AGAINST THE UNITED STATES TAX ON INCOME THE APPROPRIATE AMOUNT OF the income tax paid to _________BY THAT COMPANY by or on behalf of the distributing company with respect to the profits out of which SUCH the dividends are paid. SUCH APPROPRIATE AMOUNT SHALL BE BASED UPON THE AMOUNT OF TAX PAID TO _________BUT THE CREDIT SHALL NOT EXCEED THE LIMITATIONS (FOR THE PURPOSE OF LIMITING THE CREDIT TO THE UNITED STATES TAX ON INCOME FROM SOURCES OUTSIDE OF THE UNITED STATES) PROVIDED BY UNITED STATES LAW FOR THE TAXABLE YEAR. FOR PURPOSES OF APPLYING THE UNITED STATES CREDIT IN RELATION TO TAX PAID TO _________THE TAXES REFERRED TO IN
PARAGRAPHS 2(b) AND 3 OF ARTICLE 2 (TAXES COVERED) SHALL BE CONSIDERED TO BE INCOME TAXES. For the purposes of this paragraph, the taxes referred to in paragraph 1(b) and 2 of Article 2 (Taxes Covered) shall be considered income taxes. Credits allowed solely by reason of the preceding sentence, when added to otherwise allowable credits for taxes referred to in paragraphs 1(b) and 2 of Article 2, shall not in any taxable year exceed that proportion of the United States tax on income which taxable income arising in _______bears to total taxable income.

2. IN THE CASE OF ________DOUBLE TAXATION SHALL BE AVOIDED AS FOLLOWS: IN ACCORDANCE WITH THE PROVISIONS AND SUBJECT TO THE LIMITATIONS OF THE LAW OF_____(AS IT MAY BE AMENDED FROM TIME TO TIME WITHOUT CHANGING THE GENERAL PRINCIPLE HEREOF), THE _______SHALL ALLOW TO A RESIDENT OR CITIZEN OF ________AS A CREDIT AGAINST THE _______TAX ON INCOME OR CAPITAL THE APPROPRIATE AMOUNT OF TAX PAID TO THE UNITED STATES: AND IN THE CASE OF A ________COMPANY OWNING AT LEAST 10 PERCENT OF THE VOTING STOCK OF A COMPANY WHICH IS A RESIDENT OF THE UNITED STATES FROM WHICH IT RECEIVES DIVIDENDS IN ANY TAXABLE YEAR, ___SHALL ALLOW AS A CREDIT AGAINST THE UNITED STATES TAX ON INCOME THE APPROPRIATE AMOUNT OF TAX PAID TO THE UNITED STATES BY THAT COMPANY WITH RESPECT TO THE PROFITS OUT OF WHICH SUCH DIVIDENDS ARE PAID. SUCH APPROPRIATE AMOUNT SHALL BE BASED UPON THE AMOUNT OF TAX PAID TO THE UNITED STATES, BUT THE CREDIT SHALL NOT EXCEED THE LIMITATIONS (FOR THE PURPOSE OF LIMITING THE CREDIT TO THE _____TAX ON INCOME FROM SOURCES OUTSIDE OF _______) PROVIDED BY LAW FOR THE TAXABLE YEAR. FOR PURPOSES OF APPLYING THE _____CREDIT IN RELATION TO TAX PAID TO THE UNITED STATES THE TAXES REFERRED TO IN PARAGRAPHS 2(A) AND 3 OF ARTICLE 2 (TAXES COVERED) SHALL BE CONSIDERED TO BE INCOME TAXES.

2. In accordance with the provisions and subject to the limitations of the law of _______(as it may be amended from time to time without
amending the general principle hereof) ______ shall allow to a resident or a citizen of______ as a credit against the _____ tax on income _____________________________

3. FOR THE PURPOSES OF THE PRECEDING PARAGRAPHS OF THIS ARTICLE, THE SOURCE OF INCOME OR PROFITS SHALL BE DETERMINED IN ACCORDANCE WITH THE FOLLOWING RULES:

(a) DIVIDENDS, AS DEFINED IN PARAGRAPHS 3 OF ARTICLE 10 (DIVIDENDS), SHALL BE DEEMED TO ARISE IN A CONTRACTING STATE IF PAID BY A COMPANY WHICH IS A RESIDENT OF THAT STATE OR IF PARAGRAPH 5(c) OF ARTICLE 10 (DIVIDENDS) APPLIES.

(b) INTEREST, AS DEFINED IN PARAGRAPHS 2 OF ARTICLE 11 (INTEREST), SHALL BE DEEMED TO ARISE IN THE STATE SPECIFIED IN PARAGRAPHS 4 OF ARTICLE 11.

(c) ROYALTIES, AS DEFINED IN PARAGRAPHS 2 OF ARTICLE 12 (ROYALTIES), SHALL BE DEEMED TO ARISE IN A CONTRACTING STATE TO THE EXTENT THAT SUCH ROYALTIES ARE WITH RESPECT TO THE USE OF, OR THE RIGHT TO USE, RIGHTS OR PROPERTY WITHIN THAT STATE.

(d) EXCEPT FOR INCOME OR PROFITS REFERRED TO IN SUBPARAGRAPHS (a), (b), OR (c), AND EXCEPT FOR INCOME OR PROFITS TAXED BY THE UNITED STATES SOLELY BY REASON OF CITIZENSHIP IN ACCORDANCE WITH PARAGRAPHS 2 OF ARTICLE 1 (PERSONAL SCOPE): INCOME OR PROFITS DERIVED BY A RESIDENT OF A CONTRACTING STATE WHICH MAY BE TAXED IN THE OTHER CONTRACTING STATE IN ACCORDANCE WITH THIS CONVENTION SHALL BE DEEMED TO ARISE IN THAT OTHER CONTRACTING STATE.

3. For the purpose of allowing relief from double taxation pursuant to this Article, income shall be deemed to arise exclusively as follows

(a) income derived by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention (other than solely by reason of citizenship in accordance with paragraph 2 of Article 1 (General Scope) shall be deemed to arise in that other State;

(b) income derived by a resident of a Contracting State which may
Treaty Shopping

not be taxed in the other Contracting State in accordance with the Convention shall be deemed to arise in the first-mentioned State. The rules of this paragraph shall not apply in determining credits against United States tax for foreign taxes other than the taxes referred to in paragraphs 1(b) and 2 of Article 2 (Taxes Covered).

Article 24
Non-Discrimination

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected. FOR PURPOSES OF THE PRECEDING SENTENCE, NATIONALS WHO ARE SUBJECT TO TAX BY A CONTRACTING STATE ON WORLDWIDE INCOME ARE NOT IN THE SAME CIRCUMSTANCES AS NATIONALS WHO ARE NOT SO SUBJECT. This provision shall NOTWITHSTANDING THE PROVISIONS OF ARTICLE 1 (PERSONAL SCOPE), ALSO apply to persons who are not residents of one or both of the Contracting States. However, for the purposes of United States tax, a United States national who is not a resident of the United States and a national who is not a resident of the United States are not in the same circumstances.

2. For the purposes of this Convention, [t]he term “nationals” means:
   (a) in relation to ____________________________;
   and
   (b) in relation to the United States, United States citizens.

3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefS and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 5 of Article 11 (Interest), or paragraph 4 of Article 12 (Royalties) apply, interest, royalties and other disburse-
ments paid by AN ENTERPRISE a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable profits of SUCH ENTERPRISE, the first-mentioned resident, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. FOR PURPOSES OF THIS PARAGRAPh, THE TERM “OTHER DISBURSEMENTS” SHALL INCLUDE CHARGES FOR AMOUNTS EXPENDED BY SUCH RESIDENTS FOR PURPOSES OF SUCH ENTERPRISE, INCLUDING A REASONABLE ALLOCATION OF EXECUTIVE AND GENERAL ADMINISTRATIVE EXPENSES (EXCEPT TO THE EXTENT REPRESENTING THE EXPENSES OF A TYPE OF ACTIVITY WHICH IS NOT FOR THE BENEFIT OF SUCH ENTERPRISE, BUT CONSTITUTE “STEWARDSHIP” OR “OVERSEEING” FUNCTIONS UNDERTAKEN FOR SUCH RESIDENT’S OWN BENEFIT AS AN INVESTOR IN THE ENTERPRISE), RESEARCH AND DEVELOPMENT, AND OTHER EXPENSES INCURRED BY SUCH RESIDENT FOR THE BENEFIT OF A GROUP OF RELATED ENTERPRISES INCLUDING SUCH ENTERPRISE. Similarly, any debts of AN ENTERPRISE a resident of a Contracting State to a resident of the other Contracting State shall, for the purposes of determining the taxable capital of SUCH ENTERPRISE, the first-mentioned resident, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

6. The provisions of this Article shall, IN ACCORDANCE WITH THE PROVISIONS OF PARAGRAPh 4 OF notwithstanding the provisions of Article 2 (Taxes Covered), apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

Article 25
Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the
Contracting States result for him OR HER in taxation not in accordance with the provisions of this Convention, he OR SHE may, irrespective of the remedies provided by the domestic law of those States, present his OR HER case to the competent authority of the Contracting State of which he OR SHE is a resident or national.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may agree

(a) to the same attribution of income, deductions, credits, or allowances of an enterprise of a Contracting State to its permanent establishment situated in the other Contracting State;

(b) to the same allocation of income, deductions, credits, or allowances between persons, INCLUDING A UNIFORM POSITION ON THE APPLICATION OF THE REQUIREMENTS OF PARAGRAPH 3 OF ARTICLE 24 (NON-DISCRIMINATION);

(c) to the same characterization of particular items of income;

(d) to the same application of source rules with respect to particular items of income; AND

(e) to a common meaning of a term.

(f) to increases in any specific amounts referred to in the Convention to reflect economic or monetary developments; and

(g) to the application of the provisions of domestic law regarding penalties, fines, and interest in a manner consistent with the purposes of the Convention.

They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

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

5. THE COMPETENT AUTHORITIES OF THE CONTRACTING
STATES MAY PRESCRIBE REGULATIONS TO CARRY OUT THE PURPOSES OF THIS CONVENTION.

Article 26
Exchange Of Information And Administrative Assistance

1. The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 (PERSONAL General Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment, OR collection OF or administration of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation
   (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
   (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
   (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (ordre public).

3. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting States shall provide information under this Article in the form of depositions of
witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such that other State with respect to its own taxes.

4. Each of the Contracting States shall endeavor to collect on behalf of the other Contracting State such amounts as may be necessary to ensure that relief granted by the present Convention from taxation imposed by such that other Contracting State does not enure to the benefit of persons not entitled thereto.

5. Paragraph 4 of this Article shall not impose upon either of the Contracting States the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own taxes, or which would be contrary to its sovereignty, security, or public policy.

6. For the purposes of this Article, this the Convention shall apply, notwithstanding the provisions of Article 2 (Taxes Covered), to taxes of every kind imposed by a Contracting State.

Article 27
Diplomatic Agents and Consular Officers
Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

Article 28
Entry Into Force
1. This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at ———as soon as possible.

2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect
   (a) In respect of taxes withheld at the source, to for amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force.
   (b) In respect of other taxes, to for taxable periods beginning on or after the first day of January next following the date on which this the Convention enters into force.
Article 29
Termination

1. This Convention shall remain in force until TERMINATION terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after 5 years from the date on which this Convention enters into force, provided that at least 6 months' prior notice of termination has been given through diplomatic channels. In such event, the Convention shall cease to have effect:

(a) In respect of taxes withheld at THE source, TO for amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period;

(b) In respect of other taxes, TO for taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period. DONE at __ in duplicate, in the English and __ languages, the two texts have in a equal authenticity, this __ day of ______19 __.

For the United States of America
For ________________