TECHNICAL EXPLANATION OF THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT JAMAICA ON MAY 21, 1980, AS AMENDED BY THE PROTOCOL SIGNED AT JAMAICA ON JULY 17, 1981

GENERAL EFFECTIVE DATE UNDER ARTICLE 29: 1 JANUARY 1982

It is the practice of the Treasury Department to prepare for the use of the Senate and other interested persons a Technical Explanation of the tax conventions and protocols, which are submitted to the Senate for its advice and consent to ratification.

An Income Tax Convention with Jamaica and accompanying Exchange of Notes were signed May 21, 1980, and submitted by the President to the Senate on August 4,1980. The Amending Protocol to the Convention and accompanying Exchange of Notes were signed July 17, 1981 and submitted by the President to the Senate on September 8,1981. On September 24,1981, the Senate Committee on Foreign Relations held hearings and the Technical Explanation was presented. The Senate voted its advice and consent on December 16, 1981, and instruments of ratification were exchanged on December 29, 1981.

INTRODUCTION

In this technical explanation of the Convention between the United States and Jamaica signed on May 21,1980, as amended by the Protocol signed on July 17, 1981 ("the Convention"), references are made to the U.S. Model Income Tax Convention of 1977 (the "U.S. Model") and to the extension in 1959 to Jamaica of the 1945 Income Tax Convention between the United States and the United Kingdom, as amended by Protocols of June 6,1946, May 25, 1954 and August 16, 1957 ("the 1959 Convention"). These references are intended to put various provisions of the Convention into context. The technical explanation does not, however, provide a complete comparison between the Convention and either the U.S. Model or the 1959 Convention. Moreover, neither the Convention nor the technical explanation is intended to have implications for the interpretation of the 1959 Convention.

The technical explanation is an official guide to the Convention. It reflects policies behind particular Convention provisions, as well as understandings reached with respect to the interpretation and application of the Convention.

TABLE OF ARTICLES

ARTICLE 1
Personal Scope

Article 1 identifies the persons who come within the scope of the Convention. Paragraph 1 provides that, in general, the Convention applies to persons who are residents of one or both of the Contracting States. The term "resident" is defined in Article 4 (Residence). The Convention may also apply to residents of third States. For example, paragraph 6 of Article 10 (Dividends) covers certain dividends derived by residents of third States and Article 27 (Exchange of Information) may apply to an exchange of information concerning residents of third States.

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

convention.

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

Paragraph 4 sets forth certain exceptions to the saving clause. These exceptions are, in general, necessary to assure that provisions of the Convention intended to reduce a resident's tax liability to his country of residence fulfill their intended objective. Subparagraph (a) provides that the saving clause does not affect the benefits provided under paragraphs 1(b) and 4 of Article 19 (Pensions, etc.) and Articles 24 (Relief from Double Taxation), 25 (Non-Discrimination) and 26 (Mutual Agreement Procedure). Thus, notwithstanding the saving clause, the benefits of these Articles are available to residents and citizens of a Contracting State, as provided in the Articles.

Subparagraph (b) of paragraph 4 provides a second category of exceptions to the saving clause for persons who are residents of a Contracting State but are not citizens of that State and do not have immigrant status in that State. This second category of exceptions includes benefits conferred under Articles 20 (Government Service), 21 (Students and Trainees), 22 (Teachers and Researchers) and 28 (Diplomatic Agents and Consular Officers).

ARTICLE 2
Taxes Covered

Paragraph 1 states that the Convention applies to taxes on income imposed by a Contracting State. Paragraph 1 is not intended either to broaden or limit paragraph 2, which provides that the Convention shall apply to the following Jamaican taxes: the Jamaican income tax, company profits tax and transfer tax. Thus, paragraph 2 does not encompass the Jamaica bauxite production levy. It is not intended that the omission of the production levy from paragraph 2 should have any implications for the U.S. tax treatment of such levy.

Paragraph 2 also designates the existing United States taxes to which the Convention shall apply. These taxes are the Federal income taxes imposed by the Code, but excluding the accumulated earnings tax (Code section 531), except as provided in paragraph 5 of Article 10 (Dividends), and the personal holding company tax (Code section 541). Thus, this paragraph and paragraph 5 of Article 10 restrict the application of the accumulated earnings tax in the case of certain Jamaican tax incentive companies and certain companies controlled by residents of Jamaica. See the discussion of paragraph 5 of Article 10 below. Paragraph 2 does not cover the excise tax on insurance premiums paid to foreign insurers, the excise tax with respect to private foundations, or U.S. social security taxes.

Except for Article 25 (Non-Discrimination), the Convention does not apply to taxes on capital, and it applies to taxes imposed only at the national level. Capital taxes are not generally covered by this Convention because neither State currently imposes capital taxes.

Paragraph 3 provides that the Convention shall also apply to any taxes imposed subsequent to May 21, 1980, which are identical or substantially similar to the taxes existing on that date and covered by the Convention. The competent authorities agree to notify each other of any significant changes in their respective tax laws and of any official published material relating to the application of the Convention including this technical explanation.

Paragraph 3 also provides that the Convention shall apply to a tax imposed by Jamaica in lieu of the Jamaican income tax or company profits tax covered by paragraph 2(b). As explained in the Exchange of Notes signed on May 21, 1980, such a tax must meet the requirements of Code section 903 to be covered by the Convention.

Paragraph 4 provides that the Convention applies to taxes of all kinds imposed at all levels of government for the purposes of Article 25 and to all national taxes for the purposes of Article 27 (Exchange of Information and Administrative Assistance).

ARTICLE 3
General Definitions

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

Paragraph 1(a) of this Article defines the term "person" to include an individual, a partnership, a company, an estate, a trust and any other body of persons. The term "company" means any body corporate or any other entity which is treated as a body corporate for tax purposes.

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

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

The term "competent authority" is defined in paragraph 1(e) to mean, in the case of the United States, the Secretary of the Treasury or his delegate. The Secretary has delegated the general authority to act as competent authority to the Commissioner of Internal Revenue Service, who has redelegated such authority to the Assistant Commissioner (Compliance), with the concurrence, in certain cases, of the Assistant Commissioner (Technical). The Assistant Commissioner (Compliance) has redelegated authority to the Director of International Operations to administer programs for routine and specific exchanges of information and mutual assistance in collection and to the Director, Examination Division, to administer programs for Simultaneous and industrial exchanges of information.

The term "United States" is defined to mean the United States of America and, when used in a geographical sense, includes the States and the District of Columbia, the U.S. territorial water and any area outside the States and the District of Columbia which, in accordance with international law and the laws of the United States, is an area within which the rights of the United States with respect to the natural resources of the seabed and subsoil may be exercised.

The term "Jamaica" means the island of Jamaica, the Morant Cays the Pedro Cays and their Dependencies. When used in a geographical sense "Jamaica" includes the territorial waters of Jamaica and any area outside such territorial waters which in accordance with international law and the laws of Jamaica is an area with in which the rights of Jamaica with respect to the natural resources of the seabed and subsoil may be exercised.

The term "Contracting State" is defined to mean the United States or Jamaica, as the context requires.

A "national" of the United States is defined as a citizen of the United States as well as any company, association or other entity deriving its status as such from the laws of the United States, or of any political subdivision. A "national" of Jamaica is defined as a citizen of Jamaica, and any company, association, or other entity, such as a trust, deriving its status as such from the laws of Jamaica. The term "national" is used in Articles 20 (Government Service), 25 (Non-Discrimination) and 26 (Mutual Agreement Procedure).

Paragraph 2 provides that in the case of a term not defined in the Convention the domestic tax law of the Contracting State applying to the Convention shall control, unless the context in which the term is used requires a definition independent of domestic tax law or the competent authorities reach agreement on a meaning pursuant to Article 26 (Mutual Agreement Procedure). The term "context" refers to the purpose and background of the provisions in which the term appears.

Pursuant to the provisions of Article 26, the competent authorities of the Contracting States may resolve by mutual agreement any difficulties or doubts as to the interpretation or application of the Convention. An agreement by the competent authorities with respect to the meaning of a term used in the Convention would supercede conflicting meanings in the domestic laws of the Contracting States.

ARTICLE 4
Residence

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

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

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

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

Paragraph 1 of this Article also provides that a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income derived by such person is subject to tax by such Contracting State as the income of a resident. For example, under United States law, a partnership is never, and an estate or trust is often not, taxed as such. Thus, under the Convention, a partnership, estate, or trust will be treated as a resident of the United States only to the extent that income derived by such partnership, estate, or trust is subject to tax by the United States as the income of a U.S. resident. Similarly, if a resident of Jamaica and a resident of a third State form a partnership, and the partnership derives dividends from the United States, the limitation of U.S. tax under the provisions of Article 10 (Dividends) applies only to the dividends of the partner resident of Jamaica. However, the fact that a charitable organization or pension fund is generally exempt from tax by the Contracting State in which it is organized is not to be construed to deny such entity's status as a resident of that State under the Convention.

Paragraph 2 provides a series of tie-breaking rules for assigning residence to an individual who under paragraph 1 is a resident of both Contracting States. The first test depends upon where the individual has a permanent home available. If this test is inconclusive because the individual has a permanent home in both States or in neither of them, he is considered a resident of the State which is the center of his vital interests; i.e., the State with which his personal and economic relations are closer. If such a center cannot be determined, residence is where the individual has an habitual abode. If he has an habitual abode in both States or in neither of them, he is deemed to be a resident of the State of which he is a national. Should the individual be a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question of residence by mutual agreement under the authority of Article 26 (Mutual Agreement Procedure).

Paragraph 3 provides that a company which under paragraph 1 is a resident of both Contracting States (i.e., it is incorporated in the United States and has its place of effective management in Jamaica) shall be considered to be outside the scope of the Convention except for purposes of paragraph 2 of Article 10 (Dividends) in the case of dividends paid by such a company, Article 25 (Non-Discrimination), Article 26 (Mutual Agreement Procedure), Article 27 (Exchange of Information and Administrative Assistance) and Article 29 (Entry into Force). Thus, such a corporation is generally taxable as a resident by both Contracting States pursuant to their respective taxation laws. This paragraph differs from the U.S. Model Income Tax Convention which provides that a company resident in both Contracting States is considered to be a resident of the Contracting State under whose laws it was organized.

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

Paragraph 5 provides that where income otherwise eligible for relief from source basis tax under the Convention (e.g., under Articles 7 (Business Profits), 8 (Shipping and Air Transport), 10 (Dividends), 11 (Interest) and 12 (Royalties)), is denied such source basis benefits if the income is taxable to a person in the other Contracting State only if, and to the extent, it is remitted to or received by that person. For example, in certain cases individuals who are residents of Jamaica are not taxable by Jamaica on foreign source investment income, unless it is remitted to or received by them in Jamaica. If such income were received outside of Jamaica, or accumulated by the payer, the Jamaican resident would not be subject to Jamaican tax on that income. Thus, paragraph 5 provides that the reductions in rates or exemptions from U.S. tax otherwise provided to such a person by the Convention do not apply to the extent such items of income are not remitted to or received by such person in the calendar year the income accrues. Otherwise, the United States would be foregoing tax where double taxation does not in fact occur. Note that paragraph 5 does not deny source basis tax benefits if the income is remitted to or received in the other Contracting State by the end of the calendar year following the calendar year in which the income accrued.

ARTICLE 5
Permanent Establishment

This Article defines the term "permanent establishment," which is relevant particularly to the taxation of business profits under Article 7 (Business Profits). Paragraph 1 defines the term "permanent establishment" as a fixed place of business through which the business of an enterprise is wholly or partly carried on. Paragraph 2 provides an illustrative list of fixed places of business which constitute a permanent establishment. The list includes: a place of management; a branch; an office; a factory; a workshop; a store or premises used as a sales outlet; a warehouse, in relation to a person providing storage facilities for others; a mine, an oil or gas well, a quarry or any other place of extraction of natural resources. The term "place of management" is used in the OECD Model Income Tax Convention. Since a place of management would in most cases require an office, which is specifically listed in paragraph 2, the insertion of "place of management" will generally not cause a fixed place of business to be a permanent establishment if it would not otherwise be a permanent establishment. The subparagraph (f) reference to a premises used as a "sales outlet" does not mean that premises used by an enterprise for the mere delivery of goods is a permanent establishment; additional significant activity by the enterprise at the premises, such as the negotiation of sales and delivery of goods, is necessary for the premises to constitute a "sales outlet" and a permanent establishment of the enterprise.

Paragraph 2(i) provides that a building site or construction, assembly, installation, or dredging project, or a drilling rig or ship used for the exploration of natural resources within a Contracting State constitutes a permanent establishment, but only if the project or activity continues within that State for one or more periods totaling 183 days in a 12 month period. For a permanent establishment to exist in any one year, however, the site, project, or activity must continue for at least 30 days in that year. A series of contracts or projects which are interdependent both commercially and geographically is to be treated as a single project for the purpose of applying the 183 day test.

Paragraph 2(j) provides that the furnishing of services, including consultancy, management, technical, and supervisory services within a Contracting State by an enterprise through employees or other personnel constitutes a permanent establishment but only if:

the activities continue within that State for a period or periods aggregating more than 90 days in any 12 month period (and for 30 days or more in the taxable year); or,

the services are performed within that State for a related enterprise.

Thus, if a calendar year taxpayer provides consulting services to several unrelated companies in Jamaica for 25 days during December of year l and for 70 days during January-November of year 2, the taxpayer will be considered, under paragraph 2(j) to have a permanent establishment in Jamaica in year 2.

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

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

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

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

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

(d) the maintenance of a 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

It should he noted that the phrase "other than goods or merchandise held for sale by such enterprise in a store or premises used as a sales outlet" in paragraph 3(a) and (b) narrows somewhat these exceptions to the definition of permanent establishment when a person has a sales outlet. The term "sales outlet" is intended, however, to mean a place of business where the enterprise conducts activities which contribute significantly to the conclusion of sales, not a place where goods are merely delivered. The reference in subparagraph (e) to advertising, scientific research and supply of information is not intended to suggest that such activities are always auxiliary or that other activities cannot be auxiliary.

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

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

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

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

the sale of such goods or merchandise.

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

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

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

ARTICLE 6
Income from Immovable Property (Real Property)

Paragraph 1 of this Article provides that income derived by a resident of a Contracting State from real property, including income from agriculture and forestry, may be taxed in the other Contracting State if the property is situated in that other State. This right to tax does not depend on whether the income is derived through a permanent establishment in that other State. Also, the Convention does not limit the amount of tax imposed by the other Contracting State on the real property income. In contrast, Article IX of the 1959 Convention imposes a limitation of 15 percent on the tax imposed on certain royalties in respect of the extraction of natural resources. Income derived from real property includes income from rights such as an overriding royalty or a net profits interest in a natural resource. Income in the form of rights to explore for or exploit natural resources which a person receives as compensation for services (e.g., exploration services) is, however, subject to the provisions of Article 7 (Business Profits), 14 (Independent Personal Services) or 15 (Dependent Personal Services), as the case may be, rather than the provisions of this Article.

Paragraph 2 defines real property as having the meaning it has under the laws of the Contracting State in which the property is situated. Paragraph 2 also provides that certain other types of property are included in the Convention definition of real property, notwithstanding domestic law definitions.

Paragraph 3 provides that the basic rule in paragraph 1 applies to income derived from the direct use, letting, or any other use of real property. Paragraph 4, provides that the rules of this Article apply to the income from immovable property of an enterprise or from property used for the performance of independent personal services.

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

ARTICLE 7
Business Profits

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

Paragraph 1 provides that the business profits, as defined in paragraph 7, of an enterprise of a Contracting State shall be taxable only by that State except to the extent that such profits are attributable to a permanent establishment through which the enterprise carries on business in the other Contracting State. The term "permanent establishment" is defined in Article 5 (Permanent Establishment).

Paragraph 2 provides that the profits to be attributed to a permanent establishment are those which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions. The term profits "attributable to" a permanent establishment means that the limited "force-of-attraction" rule of Code Section 864(c)(3) does not apply for U.S. tax purposes under the Convention. Profits may, however, be from sources within or without a Contracting State and be "attributable to" a permanent establishment. Thus, items of income described in section 864(c)(4)(B) of the Code which are attributable to a permanent establishment in the United States are subject to tax by the United States. In contrast, paragraph (1) of Article III of the 1959 Convention allows the United States to tax industrial and commercial profits only from sources within the United States.

Paragraph 3 provides that there shall be allowed as deductions those expenses incurred for the purposes of the permanent establishment, whether incurred in the State where the permanent establishment is located or elsewhere. While administrative expenses, research and development expenses, interest, and other expenses are not specifically listed in paragraph 3, such expenses are deductible pursuant to paragraph 3 wherever incurred if, of course, they are substantiated.

Paragraph 4 provides that the mere purchase by a permanent establishment of goods or merchandise for the enterprise shall not result in profits being attributed to the permanent establishment. Paragraph 5 provides that the same method for determining the profits attributable to a permanent establishment shall be used each year unless there is good and sufficient reason to change. In the United States, such a change may be a change of accounting method requiring the approval of the Internal Revenue Service.

Paragraph 6 provides that where business profits include items of in come dealt with separately in other Articles of the Convention, then the provisions of those separate Articles override the provisions of Article 7. Thus, for example, the taxation of income from international shipping and transport dealt with in Article 8 (Shipping and Air Transport) is governed by that Article and not by Article 7. Similarly the taxation of dividends, interest, and royalties is controlled by Articles 10 (Dividends), 11 (Interest), and 12 (Royalties); however, those Articles provide that where dividends, interest, or royalties derived by a resident of a Contracting State are attributable to a permanent establishment of that resident in the other Contracting State, then the provisions of this Article, or Article 14 (Independent Personal Services), shall apply.

Paragraph 7 provides a definition of "business profits." Such profits are defined to mean income derived from the conduct of any trade or business, including the rental of tangible personal property and the furnishing of personal services of another person. Paragraph 7 clarifies that income derived from performance of personal services either as an employee or in an independent capacity is not within the definition of "business profits." Thus, as a generally matter, rental income derived by a resident of one Contracting State may not be taxed by the other Contracting State except to the extent attributable to a permanent establishment in the latter State. See, however, paragraph 3 of Article 12 (Royalties) which provides that payments for the use of, or the right to use, copyrights for work such as films are taxable in the Contracting State in which they arise, subject to the limitations imposed by Article 12, whether or not the owner of the payments has a permanent establishment in that State.

ARTICLE 8
Shipping and Air Transport

Paragraph 1 provides that profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only by that Contracting State. International traffic is defined in paragraph 1(d) of Article 3 (General Definitions). Thus, the other Contracting State may not tax such profits even if they are attributable to a permanent establishment on the enterprise in that other State. Unlike the 1959 Convention provision concerning shipping and aircraft (Article V), Article 8 does not list as a standard the place of registration of the ship or aircraft.

Paragraphs 2 and 3 clarify what income is to be considered profits from the operation of ships or aircraft. Paragraph 2 states that income from the operation of ships or aircraft in international traffic includes profits from the rental of ships or aircraft if operated in international traffic by the lessee, or if such rental profits are incidental to operating profits. Such "incidental" rental profits may include rents from bareboat charters.

Paragraph 3 states that profits of an enterprise of a Contracting State from he use, maintenance or rental of containers, and related equipment for the transport of containers, used for the transport of goods or merchandise in international traffic are taxable only by the Contracting State in which the enterprise is resident.

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

ARTICLE 9
Associated Enterprises

This Article confirms the power of the United States under Code section 482 to allocate items of income, deductions, credits, or allowances in certain cases. The Article also authorizes a Contracting State to, for example, reduce a proposed allocation by that State or make an adjustment of income or deductions corresponding to a proposed allocation by the other State to the extent necessary to prevent double taxation of income by the two Contracting States.

Pursuant to paragraph 1, if an enterprise subject to tax by a Contracting State and any other enterprise, whether or not a resident of a Contracting State, make arrangements or impose conditions which differ from those which would be made between independent enterprises, any income, deductions, credits or allowances which would, but for those conditions, have accrued to one of the enterprises may be taken into account in computing the amount included in the profits of that enterprise and taxed accordingly.

Paragraph 2 provides that where a redetermination has been made by a Contracting State to the income of an enterprise, then the other Contracting State shall, if it agrees with such redetermination and if necessary to avoid double taxation by the two Contracting States, make a corresponding adjustment to the income of the related enterprise in such other Contracting State. In the event that the Contracting State disagrees with such redetermination, then the competent authorities shall endeavor to resolve the matter in accordance with Article 26 (Mutual Agreement Procedure).

Paragraph 3 provides that an enterprise is related to another enterprise if either enterprise owns or controls directly or indirectly the other, or if any third person or persons own or control, directly or indirectly, both. The term "control" is defined broadly to include all forms of control, however exercisable.

ARTICLE 10
Dividends

Under paragraph 1 dividends paid by a company which is a resident of a Contracting State to a shareholder resident by the other Contracting State may be taxed by that other State. Such dividends may also be taxed by the State of which the company paying the dividends is a resident, but such tax may not be in excess of the rates specified in paragraph 2, which is amended by the 1981 Protocol: 10 percent of the dividends, where the beneficial owner is a company which owns, directly or indirectly, at least 10 percent of the voting stock of the company paying the dividends; and, 15 percent of the dividends in all other cases. Paragraph 2 does not affect the taxation of the company's profits out of which the dividends are paid.

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

Paragraph 4 provides that where dividends otherwise taxable at source at 10 or 15 percent as provided in paragraph 2 are attributable to a permanent establishment or fixed base of the beneficial owner in the Contracting State of which the company paying the dividends is a resident, then the dividends are taxable by that State in accordance with the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), rather than under the provisions of paragraph 2 of this Article.

Paragraph 5 provides that the income of a Jamaican company derived from manufacture in Jamaica of approved products under the tax incentive legislation of Jamaica shall not be subject to the United States accumulated earnings tax. Generally, these companies are incorporated in Jamaica to manufacture approved products in Jamaica and to participate in a "pioneering activity." Such companies are subject to a reduced corporate profits tax by Jamaica. Paragraph 5 also provides that any company which is a resident of Jamaica shall be exempt from United States accumulated earnings tax if individuals (other than U.S. citizens) who are resident of Jamaica control, directly or indirectly, throughout the last half of the taxable year more than 75 percent of the entire voting power in that company.

Paragraph 6 provides that, as a general rule, a Contracting State may not impose tax on dividends paid by a company which is a resident of the other Contracting State. There are two exceptions to this rule: where dividends are paid to a resident of the first-mentioned State; and where dividends are attributable to a permanent establishment or fixed base in the first State. For example, if a corporation created under the laws of Jamaica is doing business in the United States and pays dividends, those dividends may be taxed by the United States if: paid to a resident (or citizen) of the United States; or if attributable to a permanent establishment or a fixed base in the United States. Thus, dividends paid by a Jamaican company with a permanent establishment in the United States, which has at least 50 percent of its gross income from all sources attributable to such permanent establishment, shall not be taxed by the United States even if such dividends are paid to a resident of a third State. See, however, Article 17 (Limitations on Benefits) for circumstances where this exemption from U.S. tax may not apply. Also this rule (and the rest of Article 10) is subject to the saving clause of paragraph 3 of Article 1 (Personal Scope). Finally, in the case of dividends paid by a company resident in a third State, see paragraph 3 of Article 23 (Other Income).

ARTICLE 11
Interest

This Article concerns the taxation by a Contracting State of interest arising in that State and derived and beneficially owned by a resident of the other Contracting State. Paragraph 1 provides that the other Contracting State may tax such interest. Paragraph 2 provides that the Contracting State in which the interest arises may also tax the interest, but the tax may not

exceed 12.5 percent of the gross amount of the interest. There is no general interest article in the 1959 Convention. Thus, Jamaican and United States tax on interest derived by a resident of the other State is, in general, not limited by the 1959 Convention.

Paragraph 3 provides two exceptions to the rule in paragraph 2. Pursuant to these exceptions, interest is exempt from tax by the Contracting State in which the interest arises if it is derived by: the other Contracting State or an instrumentality thereof (including certain specified entities such as the Bank of Jamaica and the U.S. Federal Reserve Banks, and such other institutions of the Contracting States as are specified in agreements entered into under Article 26 (Mutual Agreement Procedure)), or a resident of the other Contracting State with respect to debt obligations guaranteed or insured by that State or an instrumentality thereof.

Paragraph 4 contains the definition of interest found in the U.S. Model. Paragraph 4 omits, however, the U.S. Model statement that penalty charges for late payment shall not be regarded as interest.

Paragraph 5 provides that interest attributable to a permanent establishment or fixed base which the beneficial owner of the interest, being a resident of a Contracting State, maintains in the other Contracting State is taxable in accordance with the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services), as the case may be, rather than under this Article.

Paragraph 6 identifies the place where interest is deemed to arise. Interest is deemed to arise in a Contracting State when the payer is that State, a political subdivision, a local authority, or a resident of that State. If, however, the interest is incurred in connection with a permanent establishment or fixed base in a Contracting State and such interest is allowable as a deduction in computing tax liability of the permanent establishment or fixed base in that State, then the interest is deemed to arise in that State, regardless of the payer's State of residence.

If an excessive amount of interest is paid by reason of a special relationship between the payer and beneficial owner of interest, or between both of them and a third person then, pursuant to paragraph 7, the provisions of Article 11 shall only apply to the portion of the payment which would have been agreed upon in the absence of such special relationship. The excess amount may be taxed by each Contracting State, in accordance with its own law, including the Convention where applicable. In the case of the United States, the excess amount may, for example, be taxed as a dividend, in which case the provisions of Article 10 (Dividends) may apply.

Note that Article 11 does not preclude the application by the United States of tax on interest paid to a beneficial owner resident in Jamaica by a company resident in Jamaica or a third State if the interest arises in Jamaica and the requirements of the Code for the imposition of such tax are satisfied. The United States tax on such interest beneficially owned by a Jamaican resident is limited by paragraph 1 to 12.5 percent.

ARTICLE 12

Royalties

Paragraph 1 provides that royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed by that other State Paragraph 2 provides that the State in which the royalty arises may also tax the royalty, but the tax may not exceed 10 percent of the royalty. Paragraph 3 contains the definition of royalty found in the U.S. Model, but treats as royalties payments received as consideration for the use of cinematograph films, or films or tapes used for radio or television. Also, paragraph 3 specifies that the term "royalties" does not include payments for the use of tangible personal property. Such payments are taxable as provided in Articles 7 (Business Profits) or 14 (Independent Personal Services), as the case may be. The term "royalties" does not encompass management fees, which are covered by the provisions of Article 7 or 14, or payments under a bona fide cost-sharing arrangement. Technical service fees may be royalties in cases where the fees are periodic and dependent upon productivity or a similar measure.

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

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

Paragraph 6 identifies the State in which royalties are deemed to arise. The general rule is that royalties arise in a Contracting State when the payer is that State itself, a political subdivision or local authority, or a resident of that State. Payments for the use of or the right to use property or rights in a Contracting State are deemed, however, to arise in the State in which they are used. This rule reflects the U.S. statutory rule, which sources royalties in the State in which the property or rights are used. Thus, if a U.S. resident licensor receives royalties from a resident of Jamaica for the use of a patent in Jamaica or in a third State the royalty will be deemed to arise in Jamaica. If, however, the Jamaican resident uses the patent in the United States, the royalty will be deemed to rise in the United States. These rules are relevant for purposes of calculating the U.S. foreign tax credit for Jamaican income taxes. See paragraphs 1 and 5 of Article 24 (Relief from Double Taxation).

ARTICLE 13
Capital Gains

Paragraph 1 provides that gains from alienation of real property may be taxed by the

Contracting State in which the property is situated. In that connection, paragraph 5 further provides that gains from the alienation of stock of a company or an interest in a partnership, trust or estate, the value of which is derived principally from real property may also be taxed by the Contracting State in which such real property is situated. In determining whether the value of stock of a company or an interest in a partnership, trust or estate is principally from real property, one takes into account any stock or interests in entities the direct disposition of which would be subject to tax under paragraph 5.

Paragraph 2 provides that a Contracting State may tax gains from the alienation of movable property forming part of the property of a permanent establishment or pertaining to a fixed base in that State which belongs to a resident of the other Contracting State.

Paragraph 3 further provides that gains derived by an enterprise of a Contracting State from the alienation of ships, aircrafts, or containers operated in international traffic shall be taxable only in that State (i.e., the State of residence).

Paragraph 4 allows Jamaica to impose its transfer tax upon the alienation of property pursuant to its Transfer Tax Act, as in effect on May 21, 1980.

Paragraph 6 provides that alienation of any property not referred to in paragraphs 1, 2, 3, 4 and 5 shall be taxable only in the Contracting State of which the alienator is resident.

Paragraph 7 allows a Contracting State to tax gains from the alienation of property derived by an individual who was a citizen of that State at any time during the ten year period immediately preceding the taxable year in which the property was alienated. In the case of a U.S. citizen such gains are taxable by the United States also pursuant to paragraph 3 of Article 1 (Personal Scope).

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

ARTICLE 14
Independent Personal Services

Unlike the 1959 Convention, this Convention provides two separate Articles - Articles 14 and l5 - dealing with the taxation of income from independent and dependent personal services. In addition, the rules of Articles 14 and 15 differ from rules of the 1959 Convention concerning the taxation of services income. See Article XI of the 1959 Convention.

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

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

The term "fixed base" is not defined but, in general, is intended to be the same as a permanent establishment.

ARTICLE 15
Dependent Personal Services

This Article generally provides that, subject to the provisions relating to directors' fees (Article 16), artistes and athletes (Article 18), pensions and annuities (Article 19) and government services (Article 20), remuneration derived by a resident of a Contracting State in respect of an employment may be taxed only by that State unless and to the extent that such remuneration is for employment exercised in the other Contracting State, in which case the latter State may also tax such remuneration. Even if the employment is exercised in the other Contracting State, however, such remuneration is taxable only in the person's State of residence if his net income in the taxable year from such employment in the other State is not more than $5,000 (or its equivalent in Jamaican dollars); or, he is present in the other State for not more than 183 days in the taxable year, he is paid by, or on behalf of, an employer who is not a resident of the other State, and the remuneration is not deductible in computing taxable income of a permanent establishment or fixed base of the employer in the other State.

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

ARTICLE 16
Directors' Fees

This Article provides that a resident of a Contracting State who derives fees for services performed in the other Contracting State as a director of a company resident in that other State may be taxed by that State on such fees except where the amount of such fees, not including expenses reimbursed to him or borne on his behalf, does not exceed $400 (or its equivalent in Jamaican dollars) per day for each day such person is present in that other State for the purpose of performing such services. In the event that the director's fees exceed the daily allowance, the

full amount of such fees is subject to tax by that other State.

ARTICLE 17
Limitations on Benefits

Article 17, which is amended by the 1981 Protocol, assures that source basis tax benefits granted by a Contracting State pursuant to the Convention go to the intended beneficiaries - the residents of the other Contracting State - and not to residents of third States not having a substantial business and tax nexus with the other Contracting State. In the absence of Article 17, residents of a third State might organize a company in a Contracting State for the purpose of, for example, claiming preferential source basis tax rates in the other Contracting State.

Paragraph 1 provides that any person other than an individual (e.g., a company or a trust), which is a resident of a Contracting State shall not be entitled to relief from source basis tax under the Convention 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 individuals resident in the first-mentioned State; and
>
> (b) the income of such person is *not* used in substantial part, directly or indirectly, to meet liabilities to persons who are residents of third States, other than any resident of a third State who is a citizen of either of the Contracting States and taxable by such State on his worldwide income on the basis of citizenship.

The term "liabilities" used in subparagraph (b) of paragraph 1 includes liabilities for items such as interest or royalties. A company that has substantial trading in its stock on a recognized exchange in either of the Contracting States is presumed, solely for purposes of subparagraph (a), to be owned by individuals resident in the Contracting State in which the company itself is resident (as determined under Article 4 (Residence)). Thus, a Jamaican company having substantial trading in its stock on a recognized exchange in Jamaica or in the United States is presumed to be owned by residents of Jamaica and, therefore, is presumed to satisfy the requirements of subparagraph (a). Paragraph 1 applies to relief from taxation that would otherwise be granted pursuant to provisions such as Article 7 (Business Profits), Article 8 (Shipping and Air Transport), Article 10 (Dividends), Article 11 (Interest), Article 12 (Royalties), and Article 13 (Capital Gains).

Paragraph 2 provides that a person who cannot, or does not, demonstrate that the requirements of paragraph 1 are met may obtain source basis tax benefits under the Convention by demonstrating that the acquisition, ownership or maintenance of such person, and the conduct of such person's operations did not have as a principal purpose obtaining such benefits under the Convention. Paragraph 3 illustrates circumstances where the requirements of paragraph 2 have been satisfied. As explained in the Exchange of Notes accompanying the Protocol, paragraph 3 is not intended to suggest that the requirements of paragraph 2 cannot be met in other circumstances, not to limit the factors that may be taken into account in determining whether the requirements of paragraph 2 have been met.

ARTICLE 18
Artistes and Athletes

This Article deals with the taxation of income derived by a resident of a Contracting State as a entertainer, musician or athlete from the performance of services as such in a Contracting State. Paragraph 1 overrides the provisions of Article 14 (Independent Personal Services) and Article 15 (Dependent Personal Services) to allow the other State to tax such income, where the latter Articles would not permit such taxation, but only if the gross receipts for such services, not including expenses reimbursed to the artiste or athlete or borne on his behalf, exceeds $400 (or its equivalent in Jamaican dollars) per day of performance or $5,000 (or its equivalent in Jamaican dollars) in the taxable year. If such gross receipts exceed $400 per day or $5,000 per year, the full amount, not just the excess, is subject to tax by the Contracting State in which the services are performed. Income derived from services rendered by persons such as producers, directors and technicians and others who are not artistes and athletes is taxable in accordance with the provisions of Article 14 or Article 15, as the case may be.

Paragraph 2 deals with cases in which income in respect of the activities of an entertainer or athlete accrues to a person other than, or in addition to, the entertainer or athlete; e.g., where the entertainer performs services as an employee of, or a contractor for, a corporation or other person. Paragraph 2 provides that income in respect of the personal activities of an artiste or athlete which accrues to the benefit of another person, including a company, trust, or partnership, may, notwithstanding the provisions of Articles 7 (Business Profits), 14 and 15 be taxed in the Contracting State in which the activities of the entertainer or athlete take place. Thus, such other person could not claim the permanent establishment protection otherwise provided by Article 7. For purposes of paragraph 2, income is considered not to accrue to another person if it is established that neither the artiste or athlete, nor any persons related to him, has a right to participate directly or indirectly in the profits of such other person, in any manner, including the receipt of deferred compensation, bonuses, fees, dividends, partnership distributions, or other distributions. A person may be considered related to the artiste or athlete regardless of whether the person is considered to be related to him under the provisions of paragraph 5 of Article 9 (Associated Enterprises). Paragraph 2 does not affect the rule of paragraph 1 that applies to the entertainer or athlete himself.

ARTICLE 19
Pensions, etc.

Article 19 provides rules concerning the taxation of pensions, social security payments, annuities, alimony, and child support. Paragraph 1 provides that, in general, pensions and other similar remuneration beneficially derived by a resident of a Contracting State in consideration of past employment shall be taxable only by that State. However, the other Contracting State may also tax such pension if the past employment to which the pension is attributable was performed in that other State while the person was a resident of that State. Social security payments and other public pensions paid by a Contracting State to a resident of the other Contracting State (or to a citizen of the United States resident in any State) are taxable only by the Contracting State

making the payments. See paragraph 2 of Article 20 (Government Service) with respect to the taxation of pensions in respect of services rendered to a Contracting State.

Paragraph 2 provides that annuities beneficially derived by a resident of the Contracting State are generally taxable only in that State. If, however, an annuity was purchased in the other Contracting State while such person was a resident of that other State, the annuity may also be taxed by that other State. Paragraph 2 defines the term annuities to mean 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.

Paragraph 3 provides that alimony paid to a resident of a Contracting State by a resident of the other Contracting State is exempt from tax by that other State. The term "alimony" defined as periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support, which payments are taxable to the recipient under the laws of the State of which he is a resident. Thus, if U.S. resident makes periodic payments pursuant to a written separation agreement to a resident of Jamaica and such amounts are taxable to the Jamaican resident under the laws of Jamaica, such alimony is exempt from U.S. tax (unless the Jamaican resident is a U.S. citizen). If the amounts are not taxable to the Jamaican recipient under the laws of Jamaica then U.S. tax may be imposed at statutory rates (i.e., currently at 30 percent of the gross amount).

Paragraph 4 provides that both Contracting States shall exempt from tax periodic payments for the support of a minor child made pursuant to a written separation agreement or decree of divorce, separate maintenance, or compulsory support, paid by a resident of one Contracting State to a resident of the other Contracting State.

ARTICLE 20
Government Service

Paragraph 1 provides that, as a general rule, remuneration other than pensions paid by a Contracting State, or a political subdivision or local authority thereof to any individual for services rendered to that State, subdivision or authority shall be taxable only by that State. Paragraph 1 also provides, however, that such remuneration shall be taxable only by the other Contracting State if the services are rendered in that other State by an individual who is a resident and national of that other State. Thus, if a Jamaican citizen and resident is employed by the Government of the United States and is rendering services in Jamaica, only Jamaica may tax his wages.

Paragraph 2 provides that a pension paid by a Contracting State or a political subdivision or a local authority thereof to any individual as consideration for services rendered to that State or subdivision or local authority is taxable only by that State. If, however, the recipient is both a national and a resident of the other State, and was a national of that State at the time the services were rendered, then such income is taxable only by that other Contracting State.

Pursuant to paragraph 3, the provisions of Article 20 apply only to remuneration and

pensions in respect of governmental services. Remuneration and pensions in respect of services performed in connection with a business carried on by a Contracting State or a political subdivision or local authority thereof are taxable under the provisions of Articles 14 (Independent Personal Services), 15 (Dependent Personal Services), 18 (Artistes and Athletes), and 19 (Pensions, etc.). Whether services are governmental or performed in connection with a business is determined under the laws of the Contracting State where the services are performed.

Pursuant to paragraph 4(b) of Article 1 (Personal Scope), the benefits of Article 20 conferred by a Contracting State are not subject to the saving clause in paragraph 3 of Article 1, in the case of individuals who are neither citizens of nor have immigrant status in that State. In other cases, the saving clause does apply.

ARTICLE 21
Students and Trainees

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

Paragraph 2 provides that an individual who is a resident of a Contracting State at the time he becomes temporarily employed in the other Contracting State for the primary purpose of acquiring technical, professional or business experience from a person other than the person who employed him in the first-mentioned Contracting State, or a person related to such person, or studying at a university or other recognized educational institution shall be exempt from tax by that other Contracting State for a period not exceeding 12 consecutive months with respect to his net income from personal services in an amount not in excess of $7,500, or its equivalent in Jamaican dollars. Thus, a resident of Jamaica employed by a company resident in Jamaica, who trains for a period of 12 months at a salary of $7,500 in the United States with an unrelated company, and in order to acquire technical skills, is exempt from United States tax on such income.

Paragraph 3 provides that a student or trainee to whom paragraph 1 or 2 would otherwise apply may elect to be treated for tax purposes as a resident of the State which he is visiting for the purposes of his education or training. Under this rule, a Jamaican resident who comes to the United States as a student or trainee may elect to be taxed on his worldwide income by the United States and to claim the same deductions and personal exemptions which are available to U.S. residents. He would be considered a resident of the United States for purposes of this Convention. Such an election would benefit a student or trainee with limited income, principally from U.S. sources, especially if he is supporting dependents, since a nonresident alien is only allowed one personal exemption. The election would presumably not be made by a student or trainee with large amounts of foreign source income, because if he so elects, his foreign source income would become subject to U.S. tax. Once the election is made, it may not be revoked during the time the person qualifies for treatment under paragraph 1 or 2, except with the consent of the competent authority of the host State.

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

ARTICLE 22
Teachers and Researchers

The Article provides that if an individual who is a resident of one of the Contracting States visits the other Contracting State for a period not expected to exceed two years for the purpose of teaching or engaging in research at a university, college, school, or other educational institution in that other State, the remuneration paid to him in that other State for a period not exceeding two years from the date of his first visit for such purpose shall be exempt from tax by that other State. Paragraph 2 only applies to income from research if the research is undertaken by the individual in the public interest; paragraph 2 does not apply to income from research carried on primarily for the benefit of some other private person or persons. An individual shall be entitled to the benefits of paragraph 1 only once.

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

ARTICLE 23
Other Income

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

Paragraph 2 excepts from the rule of paragraph 1 income derived by a resident of a Contracting State which is attributable to a permanent establishment or fixed base of that resident in the other Contracting State. In such a case, the income is covered instead under the Articles dealing with business profits (Article 7), independent personal services (Article 14), or artistes and athletes (Article 18). Thus, for example, income of a U.S. resident from real property situated in a third State, which is attributable to a permanent establishment of such person in Jamaica would be subject to tax by Jamaica.

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

ARTICLE 24

Relief from Double Taxation

Paragraph 1 provides that the United States shall give a foreign tax credit for the appropriate amount of income taxes paid or accrued to Jamaica. Paragraph 1 provides a credit both for Jamaican taxes imposed on a recipient of income arising in Jamaica, and in the case of a U.S. company owning at least 10 percent of the voting power of a company resident in Jamaica from which the U.S. company receives dividends in the taxable year, the appropriate amount of Jamaican taxes paid or accrued by the Jamaican company with respect to the profits out of which it paid dividends. In this regard, the Jamaican taxes referred to in paragraphs 2(b) and 3 of Article 2 (Taxes Covered) are considered to be income taxes for purposes of paragraph 1, whether or not such payments are income taxes under the Code. As noted in the discussion of paragraph 3 of Article 2, however, any tax imposed by Jamaica, whether by statute or by contract, in lieu of the income tax or the company profits tax must meet the requirements of Code section 903. If Jamaica were to modify by contract a tax described in paragraphs 2(b) and 3, that contractual tax would be creditable for U.S. purposes if it met the requirements of Code section 901 or 903. Further, whether Jamaican taxes are paid or accrued is determined under the rules of the Code.

The amount of credit granted under the Convention for Jamaican taxes is subject to the limitations provided by United States law for the taxable year for the purposes of limiting the credit to the U.S. tax on income from sources outside of the United States. Paragraph 3, which identifies the source of income and profits for the purposes of Article 24, provides the source rules necessary to compute the foreign tax credit under the Convention. A taxpayer may, for any year, claim a foreign tax credit under the rules of the Code. Thus, he would forego the rules of the Convention that guarantee income tax status for the specified Jamaican taxes.

The source rules of paragraph 3 provide that the source of

(a) dividends described in Article 10, is in the State of residence of the paying company;

(b) interest, as defined in Article 11 (Interest), is in the State specified in paragraph 6 of Article 11;

(c) royalties, as defined in paragraph 3 of Article 12 (Royalties), is in the State specified in paragraph 6 of Article 12; and

(d) except for the just-mentioned dividends, interest and royalties, dividends and interest derived from a dual resident company described in paragraph 3 of Article 4 (Residence), and income described in paragraph 3 of Article 23 (Other Income), income or profits derived by a resident of a Contracting State which may be taxed by the other Contracting State (other than solely by reason of citizenship) are deemed to arise in that other State.

Paragraph 2 provides that, subject to the provisions and limitations of Jamaican law regarding the allowance of foreign tax credits, Jamaica will allow to a resident of Jamaica as a credit against Jamaican tax on income the appropriate amount of income tax paid or accrued to the United States. In the case of dividends from a United States company to a Jamaican company which owns at least 10 percent of the voting power of the U.S. company, Jamaica will also allow a credit for the appropriate amount of United States tax imposed with respect to the profits out of

which dividends are paid. The U.S. taxes referred to in paragraph 2(a) and 3 of Article 2 are considered to be income taxes for purposes of applying the Jamaican credit in relation to U.S. taxes.

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

ARTICLE 25
Non-Discrimination

Paragraph 1 provides that nationals of a Contracting State (e.g., individuals and companies) shall not be treated less favorably with respect to taxation and connected requirements by the other Contracting State than are nationals of that other Contracting State in the same circumstances. Nationals who are subject to tax on their worldwide income by a Contracting State are not in the same circumstances as nationals of another State who are not taxed on their worldwide income by the first-mentioned State. Thus, the United States is not obligated to treat a national of Jamaica who is a resident of a third State in the same manner as a United States national who is a resident of that third State.

Paragraph 2 provides that a Contracting State may not impose more burdensome taxes on a permanent establishment in that State of an enterprise of the other Contracting State than the first-mentioned State imposes on its own enterprises carrying on the same activities.

Paragraph 3 prohibits discrimination in the matter of deductions. Interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State must be deductible disbursements for determining taxable profits in the first-mentioned State under the same conditions as if they had been paid to a resident of the first-mentioned State. Exceptions to this rule arise where the provisions of paragraph 1 of Article 9 (Associated Enterprise) paragraph 7 of Article 11 (Interest) or paragraph 5 of Article 12 (Royalties) apply. The term "other disbursements" includes a reasonable allocation of executive and general administrative expenses, research and development expenses, and other expenses incurred for the benefit of a group of related enterprises.

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

Paragraph 5 repeats the statement of paragraph 4 of Article 2 (Taxes Covered) that Article 25 applies to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority.

Paragraph 6 provides two exceptions to coverage of this Article. Subparagraph (a) clarifies that a Contracting State is not obligated to grant to individuals not resident in that State personal allowances, reliefs or credits for taxation that it grants individuals who are so resident.

Subparagraph (b) allows Jamaica to charge a higher rate of income tax under section 48(5) of the Income Tax Act of Jamaica on life insurance companies which are residents of the United States than on a regionalized life assurance company.

Paragraph 7, added by the July 17, 1981 Protocol, allows U.S. income tax deductions for certain convention expenses that, absent paragraph 7, would not be deductible in computing U.S. tax liability because of Code section 274(h). Paragraph 7 provides that specified expenses incurred by a U.S. citizen or resident in connection with attendance at a convention, seminar or similar meeting held in Jamaica shall be deductible for U.S. tax purposes to the same extent as if the meeting were held in the United States. Paragraph 7 allows deductions only for ordinary and necessary business expenses for: lodging, meals and the personal sustenance and comfort of the traveler while at the convention in Jamaica; registration at the convention and books and other similar materials necessary for attendance at the convention; ground and air transportation to and from the convention site, but not in excess of the amount deductible under the Code with respect to transportation expenses incurred in connection with travel outside the United States. Thus, the deductibility of transportation expenses is subject to the rules of Code section 274(c). A U.S. taxpayer can claim benefits under section 274(h) with respect to a convention held in Jamaica and meeting the requirements of that section or, in the alternative, he can choose to rely on the provisions of paragraph 7 with respect to the expenses attributable to the convention if the provisions of paragraph 7 prove more beneficial.

The provisions of this Article do not override the right of the United States to impose the tax provided in Code section 897 (relating to gains derived by nonresident aliens or foreign corporations from U.S. real property interests).

The saving clause in paragraph 3 of Article 1 (Personal Scope) does not apply to Article 25.

ARTICLE 26
Mutual Agreement Procedure

Paragraph 1 provides that a person who considers that the actions of one or both of the Contracting States result, or will result, for him in taxation not in accordance with the Convention, he may present his case to the competent authority of the State of which the person is a resident or national. The person need not first have exhausted the remedies available to him in the domestic laws of the Contracting States. Paragraph 1 specifies that a resident of a Contracting State who has a permanent establishment or a fixed base in the other Contracting State may present his case to the competent authority of either Contracting State.

Paragraph 2 provides that the competent authority, if it considers the objection to be justified, and if it is not able to arrive at a satisfactory solution itself, shall endeavor to resolve the case by mutual agreement with the competent authority of the other Contracting State in order to avoid taxation not in accordance with the Convention. Any agreement so reached shall be implemented without regard to any statutory time limits of the Contracting States. In the case of Jamaica, however, the taxpayer or the U.S. competent authority must give notice to the

Jamaican competent authority of the possible claim for tax adjustment within the statutory time limits of Jamaica. Thus, if a taxpayer notifies the competent authority of Jamaica of a possible claim for an adjustment of Jamaican tax within the time provided in Jamaica's statute of limitations, then the taxpayer may file its formal claim for refund from Jamaica after the expiration of the Jamaican statute of limitations and still have such claim considered by Jamaica. Paragraph 2 does not, however, obligate the U.S. competent authority to reduce or waive a proposed U.S. tax adjustment, such as an adjustment concerning associated enterprises, if timely notice is not given to the Jamaican competent authority of a possible corresponding adjustment of Jamaican tax.

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

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

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

(c) the characterization of items of income;

(d) the application of source rules; and

(e) the meaning of a term.

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

Paragraph 4 provides that the competent authorities may communicate with each other directly for the purpose of reaching agreement in accordance with Article 26.

Paragraph 5 provides that the competent authorities may agree to increase any dollar amounts specified in the Convention. Such increases would be made to reflect monetary or economic developments. Thus, if the competent authorities agree that due to inflation in the two Contracting States the $5,000 threshold for the taxation of service income provided in paragraph 1(c) of Article 14 (Independent Personal Services) is no longer adequate given the purposes of Article 14, they may agree to a higher amount.

ARTICLE 27
Exchange of Information

Paragraph 1 provides that the competent authorities shall exchange such information as is necessary for carrying out the provisions of the Convention or of their domestic laws concerning taxes covered by the Convention. Paragraph 1 clarifies that the competent authorities may also exchange such information as is necessary to prevent fraud or tax evasion in respect of taxes covered by the Convention. Paragraph 1 requires that information so exchanged will be protected in the same manner as information obtained under domestic laws with respect to secrecy and disclosure. The use of such information is limited to those persons involved in the assessment, collection and enforcement of taxes covered in the Convention. Information may be exchanged

pursuant to paragraph 1 with respect to persons who are not residents of either Contracting State.

The provisions of paragraph 1 are intended to authorize the U.S. competent authority to allow the General Accounting Office access to tax return information received from Jamaica when GAO is engaged in a study of the administration of U.S. tax laws pursuant to a directive of Congress. The secrecy requirements of paragraph 1 must, however, be met.

Paragraph 2 provides that the State to which a request has been made shall provide information in specified fonns4 to be admissible in judicial proceedings of the requesting State. The specified forms include authenticated copies of unedited original documents, but only to the extent that such forms of information can be obtained under the laws and practices of the State with respect to its own taxes.

Paragraph 3 explains that paragraphs 1 and 2 do not obligate the United States or Jamaica to carry out measures contrary to the laws and administrative practice of either State; to supply information not obtainable under the laws or in the normal course of the administration of either State; or to supply information which would disclose trade secrets or other information the disclosure of which would be contrary to public policy. Thus, Article 27 allows, but does not obligate, the United States and Jamaica to obtain and provide information the disclosure of which would not be available to the requesting State under its laws or administrative practice or that in different circumstances would not be available to the State requested to provide information. Further, Article 27 authorizes a Contracting State to obtain information for the other Contracting State even if there is no tax liability in the State requested to obtain the information.

Paragraphs 4 and 5 provide for assistance in collection of taxes, within the parameters of a Contracting State's domestic tax laws, sovereignty, security and public policy, to ensure that Convention benefits do not accrue to persons not entitled thereto.

Paragraph 6 provides that the competent authorities may exchange information concerning every tax imposed by a Contracting State, not just the taxes listed in paragraph 2 of Article 2 (Taxes Covered).

ARTICLE 28
Diplomatic Agents and Consular Officers

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

ARTICLE 29
Entry into Force

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

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

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first day of the second month next following the date on which the Convention enters into force;

(b) in respect to other taxes, to taxable periods beginning on or after the first day of January next following the date on which the Convention enters into force.

Paragraph 3 provides for the termination of the 1959 Convention. The 1959 Convention shall cease to have effect with respect to the United States and Jamaica from the date on which the corresponding provisions of this Convention have effect according to paragraph 2.

ARTICLE 30
Termination

The Convention shall remain in force unless terminated by one of the Contracting States. Either Contracting State may terminate the Convention at any time after five years from the date on which it enters into force by giving at least Six months' prior notice through diplomatic channels. In that event, the Convention shall cease to have effect:

(a) in respect of tax withheld at the source, to amounts paid or credited on or after the first of January following the expiration of the six months' period of notice (i.e., if notice is given by June 30 of one year, the termination will be effective on January 1 of the following year);

(b) in respect of other taxes, to taxable periods beginning on or after the first day of January next following the expiration of the six months' period.