

maximum rate which is intended to ensure that the tax may be fully credited against the residence country tax.

Our income tax conventions are not designed to alter the U.S. tax liability of U.S. residents, corporations or citizens. U.S. taxpayers continue to be taxed according to our law. The conventions are designed to obtain tax benefits for U.S. corporations and residents from our treaty partners in exchange for similar benefits which we grant to their taxpayers.

The conventions also typically guarantee that taxpayers from one country will not be subject to discriminatory taxes in the other country. And they provide for administrative cooperation in avoiding double taxation and in preventing fiscal evasion.

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[10] *Convention with Romania*

Let me turn now to the convention with Romania. Although state enterprises play a large role in the Romanian economy, there is also a substantial private sector in which foreign capital is invited to participate. It is possible for a foreign investor to establish a jointly owned Romanian corporation with local capital, provided that the foreign investor owns less than 50 percent of the equity.

A tax of 30 percent is imposed on the profits of such corporations, and dividends remitted to the foreign shareholders are subject to a 10 percent withholding tax. In many respects Romanian tax principles are similar to our own and to those of Western Europe. The convention reflects this common ground and differs very little from the convention with Iceland.

Business income.—For example, the Romanian convention contains the usual rule that a resident of one country may be taxed by the other country on business income only to the extent that the income is attributable to a permanent establishment in the taxing country. The convention with Romania introduces an explicit rule which we think is implicit in most of our existing conventions; it specifically

permits items displayed at a trade fair in the host country to be sold off at the close of the fair without incurring tax liability to the host country.

Passive income.—The reciprocal withholding rates agreed on for the maximum tax at source on dividends, interest and royalties are within the usual agreed limits. The dividend withholding rate may not exceed 10 percent, the rate on interest may also not exceed 10 percent and in some cases is set at zero, and the maximum rate on royalties is 10 percent in some cases and 15 percent in others.

Personal service income.—Personal service income may be taxed by the source country if the recipient stays there longer than six months, or in the case of a self employed person if he maintains a fixed place of business ("fixed base") there to which the income is attributable. Although not in the Iceland convention the "fixed base" concept is found in the OECD model and in some other U.S. conventions. Although not defined, the "fixed base" is the same as the "permanent establishment" concept but applied to independent personal service income rather than industrial or commercial profits.

Teachers and students may remain longer than six months—from one to five years depending on the purpose of the visit—and continue to be exempt from tax on certain amounts of income. Entertainers become subject to tax after three months or if their earnings exceed \$3,000, except that entertainers whose visit is pursuant to an agreement between the two countries enjoy the longer six-month exemption.

The convention includes the standard rule that each country will exempt employees of the other sent to perform governmental functions, but for activities to qualify as governmental functions they must be so regarded by both countries. This qualification condition is not necessarily intended to produce a different result from that of our other conventions, but simply to avoid misunderstanding in a situation where

the role of the state in the two economies differs substantially.

Nondiscrimination.—The nondiscrimination article in the Romanian convention is different from the typical nondiscrimination article. U.S. citizens resident in Romania may not be more heavily taxed than resident Romanian citizens. This is a standard provision in our income tax conventions. However, the taxes imposed by Romania on resident U.S. citizens, or on permanent establishments or subsidiaries owned by U.S. residents may not be more burdensome than the taxes imposed on third country citizens or businesses in Romania, subject to differences in treatment under special agreements, such as tax treaties. The comparison with other foreign businesses was thought more appropriate than with domestic businesses given the large role of state enterprises which are subject to different and frequently heavier taxation than private firms.

Administrative cooperation.—Guidelines for administrative cooperation are also provided along lines similar to those in the Iceland convention.

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[13] TEXTS OF RESOLUTIONS OF RATIFICATION

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[14] *Resolved, (Two-thirds of the Senators present concurring therein),* That the Senate advise and consent to the ratification of the Convention between the Government of the United States of America and the Government of the Socialist Republic of Romania with respect to Taxes on Income, signed at Washington on December 4, 1975 (Ex. B, 93-2).

Technical Explanation¹ of the Convention Between the United

¹ 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 which are submitted to the Senate for its advice and consent to ratification.

An Income Tax Convention with Romania was signed December 4, 1973, and

States of America and the Socialist Republic of Romania with Respect to Taxes on Income, Signed at Washington On December 4, 1973²

ARTICLE 1. TAXES COVERED

Paragraph (1) designates the taxes of the Contracting States which are the subject of the Convention. With respect to the United States, the subject taxes are the Federal income taxes imposed by the Internal Revenue Code ("Code"), including the taxes imposed under section 531 (accumulated earnings tax) and section 541 (personal holding company tax). However, the Convention does not apply to the taxes imposed by chapters 2 (tax on self-employment income) and 21 (federal insurance contributions act) of the Code. These taxes are described as social insurance taxes to facilitate translation into Romanian.

In the case of Romania, paragraph (1) provides that the Convention applies to income taxes imposed under Romanian law, and in particular to the income taxes imposed on wages, salaries, fees, copyrights, and income from any other source received by individuals, on the profits of mixed companies, on enterprises other than mixed companies or state enterprises, on agricultural activities, on rentals, and on nonresidents.

Pursuant to paragraph (2), the Convention will also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing taxes, after the date of signature of the Convention (December 4, 1973).

For purposes of paragraph (5) of Article 7 (Business Profits) which deals with insurance and reinsurance

submitted by the President to the Senate on March 11, 1974. On November 7, 1975, the Senate Committee on Foreign Relations held hearings and this Technical Explanation was presented. The Senate voted its advice and consent on November 18, 1975, and instruments of ratification were exchanged on January 26, 1976, the convention thereby entering into force on February 26, 1976.

² Page 492; pertinent excerpts from Senate Executive Report No. 94-15, page 502; Senate Executive B is not published.

premiums, the Convention also applies to taxes other than income taxes imposed at the national level of a Contracting State on such premiums paid to a resident of the other Contracting State. The effect of this provision is discussed under Article 7 (Business Profits).

Pursuant to paragraph (3), for purposes of Article 22 (Nondiscrimination), the Convention applies to taxes of every kind which are imposed at the national, state, or local level.

Paragraph (4) provides that the competent authority of each Contracting State will notify the competent authority of the other Contracting State of any amendment of the tax laws referred to in paragraph (1), or of the adoption of substantially similar taxes imposed in addition to, or in place of, those taxes. The texts of such amendments or new statutes are to be transmitted between the competent authorities at least once a year.

ART. 2. GENERAL DEFINITIONS

Paragraph (1) sets out definitions of certain basic terms used in the Convention. A number of important terms, however, are defined elsewhere in the Convention.

The term "Romania" means the Socialist Republic of Romania. The term "United States" means the United States of America. When used in a geographical sense, the term "United States" means the states of the United States and the District of Columbia. Thus, the Convention does not apply to the possessions of the United States or the Commonwealth of Puerto Rico. When used in a geographical sense, Romania and the United States also include their respective territorial seas and continental shelves, generally in accordance with the principles of section 638 of the Code.

The term "Contracting State" is defined to mean the United States or Romania as the context requires. Although not specifically defined in the Convention, the term "State" means

the United States, Romania, or any other national State.

The term "person" is defined as including an individual, a partnership, a corporation, an estate or a trust.

The term "United States corporation" is defined as a corporation, or any entity (whether or not incorporated) treated as a corporation for United States tax purposes, which is created or organized under the laws of the United States, any state thereof, or the District of Columbia. A "Romanian corporation" is defined as any juridical person, including a mixed corporation, which is incorporated and organized under Romanian law or any other legal entity which is created under Romanian law and which is treated under its tax laws as a juridical person.

With respect to the United States, the term "competent authority" means the Secretary of the Treasury or his delegate. With respect to Romania, it means the Minister of Finance or his delegate. The term "tax" means those taxes imposed by the United States or Romania to which the Convention applies by virtue of Article 1 (Taxes Covered).

The term "international traffic" is defined as any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State. Thus, for example, coastal shipping along the Atlantic coast of the United States is not a voyage in international traffic. However, if a ship operated by a resident of Romania transports goods from Canada to the United States, leaving some of the goods in New York and the remainder in Norfolk, the portion of the voyage between New York and Norfolk is international traffic.

Paragraph (2) provides that any term used in the Convention which is not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. However, where a

term has a different meaning under the laws of Romania and the United States or where the meaning under the laws of one of the Contracting States is not readily determinable, the competent authorities may for purposes of the Convention establish a common definition in order to prevent double taxation or to further any other purpose of the Convention.

ART. 3. FISCAL RESIDENCE

This article sets forth rules for determining the residence of individuals, corporations, and other persons for purposes of the Convention. Residence is important because, in general, only a resident of one of the Contracting States may qualify for the benefits of the Convention.

Under paragraph (1), the term "resident of Romania" means a Romanian corporation as defined in Article 2 (General Definitions) or any other person who is resident in Romania for purposes of its tax. Similarly, "resident of the United States" means a United States corporation as defined in Article 2 (General Definitions) and any other person resident in the United States for purposes of its tax. Thus, a resident of the United States includes a resident alien individual and a resident citizen but not a foreign corporation. A citizen of the United States or Romania is not automatically a resident of the United States or Romania for purposes of this Convention. Similarly, even if a foreign corporation, or other foreign entity treated as a foreign corporation, is treated as a resident (see, *e.g.*, 26 CFR § 301.7701-5 of the U.S. Treasury Regulations) or a domestic corporation for certain purposes of a Contracting State's income tax law, such corporation or entity will not be treated as a resident of that Contracting State for purposes of the Convention. Thus, for example, even though a foreign corporation is taxed by the United States on its trade or business income from sources within the United States, or a foreign corporation is referred to as a resident of

the United States in the source rules in section 861 of the Code, such corporation is not a resident of the United States for purposes of the Convention.

The Convention 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 in such Contracting State. For example, under United States law, a partnership is never, and an estate or trust is often not, taxed as such. Under the Convention, income received by a partnership, estate, or trust will not be treated for purposes of the Convention as income received by a resident of the United States unless such income is subject to tax by the United States as the income of a resident. Thus, the treatment of income received by a partnership will be determined by the residence and taxation of its partners with respect to that income. To the extent the partners are subject to United States tax as residents of the United States, the partnership will be treated as a resident of the United States. Similarly, the treatment of income received by a trust or estate will be determined by the residence and taxation of the persons subject to tax on such income, which may be the grantor, the beneficiaries or the trust or estate itself, as the case may be.

Under paragraph (2), an individual who is a resident of both Contracting States under their domestic laws will, for purposes of the Convention, be deemed to be a resident of the Contracting State in which he has his permanent home, his center of vital interests (closest economic and personal relations), a habitual abode, or his citizenship, in the order listed. If the issue is not settled by these tests, the competent authorities will decide by mutual agreement the one Contracting State of which he will be considered to be a resident.

ART. 4. GENERAL RULES OF TAXATION

Under paragraph (1), a resident

of one Contracting State may be taxed by the other Contracting State only on income from sources within that other Contracting State, subject to the limitations set forth in the Convention. For this purpose, the source rules contained in various articles throughout the Convention are to be applied. However, if the resident is a citizen of the other Contracting State, that Contracting State may tax the resident without regard to this paragraph because of the saving clause of paragraph (3) of this article.

Paragraph (2) contains the customary rule that the Convention will not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of a tax imposed by it, or by any other agreement between the Contracting States. This rule reflects the principle that a convention should not increase the tax burden on residents of the Contracting States.

Paragraph (3) contains the traditional saving clause under which the United States reserves the right to tax its citizens and residents as if the Convention had not come into effect. However, the saving clause does not apply in several cases in which its application would contravene policies reflected in the Convention. Thus, the saving clause does not affect the provisions with respect to social security payments, relief from double taxation, nondiscrimination, or the mutual agreement procedure. Moreover, the saving clause does not affect the benefits of the Convention to individuals performing governmental functions, teachers, students, trainees, and members of diplomatic missions and consular offices who become resident in one of the Contracting States unless such individuals are citizens of or have immigrant status in the Contracting State imposing the tax. In the case of the United States, "immigrant status" means the individual has been admitted to the United States for perma-

nent residence. The saving clause is reciprocal.

Paragraph (5) authorizes the competent authorities of the Contracting States to prescribe regulations necessary to carry out the provisions of the Convention. On the United States side, this authority is also provided by section 7805 of the Code.

ART. 5. PERMANENT ESTABLISHMENT

This article defines the term "permanent establishment." The existence of a permanent establishment is relevant under Article 7 (Business Profits) to the taxation of industrial or commercial profits and in determining the applicability of other provisions of the Convention, such as Articles 10 (Dividends), 11 (Interest), 12 (Royalties), and 13 (Capital Gains).

Under paragraph (1), the term "permanent establishment" means a fixed place of business through which the business of a resident of one of the Contracting States is wholly or partly carried on. Illustrations in paragraph (2) of a permanent establishment include a branch, an office, a factory; a workshop; a warehouse; a mine, quarry or other place of extraction of natural resources; and a construction or installation project which exists for more than 12 months. As a general rule, any fixed facility or premises through which a resident conducts industrial or commercial activity for an indefinite or substantial period of time will be treated as a permanent establishment unless it is used for one or more of the activities described in paragraph (3).

The term "construction or installation project" includes a building site. Under the construction or installation project rule the twelve month period begins only when work physically commences in the other Contracting State. 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 twelve months' test.

Paragraph (3) specifically provides

that a permanent establishment does not include a fixed place of business if it is used only for one or more of the following:

"(a) The use of facilities for the purpose of storage, display, or delivery pursuant to a sales contract, of goods or merchandise belonging to the resident;

"(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

"(c) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

"(d) The maintenance of a fixed place of business 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 resident; or

"(e) The maintenance of a construction or installation project which does not exist for more than 12 months."

These exceptions are cumulative and a fixed place of business used solely for one or more of these purposes will not be considered a permanent establishment under the Convention. Subparagraph (a) states that delivery must be pursuant to a sales contract to emphasize the implicit restriction that a facility used for delivering another person's goods would not be included within the exception. Since the subparagraph excludes the use of facilities for storage, display or delivery, by implication it also excludes the stock of goods or merchandise itself from being deemed a permanent establishment. The construction or installation project exception in subparagraph (e) is the converse of the rule of paragraph (2) that such a project which exists for more than 12 months will be a permanent establishment.

Under paragraph (4) a person acting in one Contracting State on behalf

of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, will be deemed to give rise to a permanent establishment if such person has, and habitually exercises in the first-mentioned Contracting State, an authority to conclude contracts in the name of the resident, unless the exercise of the authority is limited to the purchase of goods or merchandise for the resident.

On the other hand, paragraph (5) provides that a resident of one Contracting State will not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in such other Contracting State through a broker, general commission agent, or any other agent of an independent status, if such agent is acting in the ordinary course of its business.

Paragraph (6) provides that a resident of one Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident sells at the termination of a trade fair or convention in the other Contracting State goods or merchandise which were displayed by such resident at the trade fair or convention. This exception does not appear in existing United States conventions, but a similar exception is contained in the pending conventions with the Soviet Union and Poland.

Under paragraph (7), the determination of whether a resident of one Contracting State has a permanent establishment in the other Contracting State is to be made without regard to the fact that such resident may be related to a resident of the other Contracting State or to a person who engages in business in that other Contracting State (whether through a permanent establishment or otherwise). As defined in Article 9 (Related Persons), a person is related to another person if either person owns or controls directly or indirectly the either, or if a third person or persons

own or control directly or indirectly both such persons.

Paragraph (8) provides that the principles set forth in this article are to be applied in determining whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States. This is necessary for the proper application of paragraph (7) of Article 11 (Interest). This paragraph is not intended to extend the benefits of the Convention to persons other than residents of the two Contracting States.

ART. 6. INCOME FROM IMMOVABLE PROPERTY

Under paragraph (1), income from immovable property, including royalties and other payments in respect of the exploitation of natural resources, e.g., oil wells, and gains from the sale, exchange or other disposition of such property or of the right giving rise to such royalties or other payments, may be taxed by the Contracting State in which the immovable property or natural resources are situated. However, income from immovable property does not include interest on indebtedness secured by immovable property (e.g., mortgages) or by a right giving rise to royalties or other payments in respect of the exploitation of natural resources. Such interest income is covered by Article 11 (Interest).

Paragraph (1) applies to income derived from the usufruct, direct use, letting, or use in any other form of immovable property. For United States purposes, the term "immovable property" is intended to have the same meaning as the term "real property."

ART. 7. BUSINESS PROFITS

Paragraph (1) sets forth the general rule that industrial or commercial profits of a resident of one Contracting State are exempt from tax by the other Contracting State unless the resident has a permanent establishment in the other Contracting State. Where there

is a permanent establishment, only the industrial or commercial profits attributable to the permanent establishment can be taxed by that other Contracting State, unless the resident is a citizen of the other Contracting State. (See the saving clause in paragraph (3) of Article 4 (General Rules of Taxation).) It is intended that, for purposes of the Convention, including paragraph (1) of Article 4 (General Rules of Taxation) and Article 21 (Relief from Double Taxation), industrial or commercial profits whether from sources within or without a Contracting State attributable to a permanent establishment which a resident of one Contracting State has in the other Contracting State will be considered to be from sources within that other Contracting State. Thus, items of income described in section 864(c)(4)(B) of the Code attributable to a permanent establishment situated in the United States will be subject to tax by the United States.

In determining the proper attribution of industrial or commercial profits under the Convention, paragraph (2) provides that both Contracting States will attribute to the permanent establishment such profits as it would reasonably be expected to derive if it were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the resident of which it is a permanent establishment. Under paragraph (3), expenses, wherever incurred, which are reasonably connected with profits attributable to the permanent establishment, including executive and general administrative expenses, will be allowed as deductions in determining the industrial or commercial profits of the permanent establishment. However, in determining the amount of the deduction under paragraph (3) for expenses incurred by the head office, the deduction may be limited to the expense incurred without including a profit element for the head office.

Paragraph (4) provides that no

profits shall be attributed to a permanent establishment merely because of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of such resident. Paragraph (2) of the article does not override paragraph (4). Thus, where a permanent establishment purchases goods for its head office, the industrial and commercial profits attributed under paragraph (2) to the permanent establishment with respect to its other activities will not be increased by adding a notional figure for profits from purchasing.

Under paragraph (5), insurance or reinsurance premiums derived by a resident of one Contracting State from sources within the other Contracting State cannot be subjected to an income tax or to any other tax in the other Contracting State unless the premiums are effectively connected with a permanent establishment in the other Contracting State. In the case of the United States, this includes the stamp tax imposed by section 4371 of the Code on foreign insurance policies covering risks in the United States. Except for the extension of the exemption to include non-income taxes, which has no counterpart in existing United States conventions, this paragraph reaches the same result as would be reached under paragraphs (1) and (6) of the article, since premiums are industrial or commercial profits to an insurance company.

Under paragraph (6), the term "industrial or commercial profits" includes income derived from manufacturing, mercantile, banking, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services, and the rental of tangible personal (movable) property. The term does not include income from the performance of personal services derived by an individual either as an employee or in an independent capacity (although such income may be effectively connected with a permanent establish-

ment and therefore taxable under paragraph (2)(b) of Article 14 (Independent Personal Services)). The term also includes income derived from real property and natural resources, dividends, interest, investment income on required reserves from insurance activities, cultural and industrial royalties and capital gains, but only if the property or rights giving rise to such income are effectively connected with a permanent establishment. See paragraph (3) of Article 10 (Dividends), paragraph (4) of Article 11 (Interest), paragraph (4) of Article 12 (Royalties) and paragraph (1)(a) of Article 13 (Capital Gains).

Paragraph (7) contains criteria for determining whether property or rights are effectively connected with a permanent establishment. Factors to be taken into account include whether the rights or property are used in or held for use in carrying on an activity giving rise to industrial or commercial profits through a permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income derived from such property or rights. For this purpose, due regard shall be given to whether or not such property or rights or such income were accounted for through such permanent establishment. The effectively connected concept in this paragraph is substantially similar to the effectively connected concept in section 864(c)(2) of the Code.

Under paragraph (8), where industrial or commercial profits include items of income which are dealt with separately in other articles of the Convention, the provisions of those articles will, except as otherwise provided therein, supersede the provisions of this article. Thus, for example, taxation of income from copyrights of motion picture films or films or tapes used for radio or television broadcasting will be controlled by Article 12 (Royalties) and not by this article unless the copyright is effectively con-

nected with a permanent establishment.

ART. 8. SHIPPING AND AIR TRANSPORT

Paragraph (1) provides that, notwithstanding Article 7 (Business Profits) and Article 13 (Capital Gains), income derived by a resident of one Contracting State from the operation in international traffic of ships or aircraft registered in that Contracting State, and gains derived from the sale, exchange or other disposition of such ships or aircraft, shall be exempt from tax by the other Contracting State.

This article also applies to income derived from the rental of ships or aircraft under a full or bareboat charter if the lessor is engaged in the operation of ships or aircraft in international traffic and the rental income is incidental to such operations. For example, if an airline which is a resident of one Contracting State has excess equipment in the winter months and leases several of its aircraft which are not required by it during that period to an airline which is a resident of the other Contracting State, that rental income of the lessor is not subject to tax by that other Contracting State, whether or not the lessee uses the aircraft in international traffic.

Paragraph (2) makes clear that the article also applies to income derived by a resident of one Contracting State from the use, maintenance, and lease of containers and other related equipment in connection with the operation in international traffic by the resident of ships or aircraft registered in such Contracting State. An example of such other related equipment is a trailer for the inland transportation of containers in connection with such operations.

This article is subject to the saving clause of paragraph (3) of Article 4 (General Rules of Taxation). Therefore, the other Contracting State may tax the resident without regard to this article if such resident is a citizen of that other Contracting State.

ART. 9. RELATED PERSONS

Where a person subject to the taxing jurisdiction of a Contracting State (whether or not a resident thereof) and any other related person make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, under paragraph (1) any income, deductions, credits or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income or loss of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person in that Contracting State.

Paragraph (2) sets forth an explicit formulation of the consequence of an adjustment made in accordance with paragraph (1) by a Contracting State to the income of one of its residents. In such event, the other Contracting State must, if it agrees with such redetermination, make a corresponding adjustment to the income of a person in such other Contracting State related to such resident. If the other Contracting State disagrees with the redetermination, the two Contracting States must endeavor to reach agreement in accordance with the mutual agreement procedure in paragraph (2)(b) of Article 23 (Mutual Agreement Procedure).

Paragraph (3) provides that for purposes of the Convention a person is related to another person if either person owns or controls directly or indirectly the other, or if a third person or persons own or control directly or indirectly both. "Control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

ART. 10. DIVIDENDS

Paragraph (1) provides that dividends paid by a corporation of one Contracting State to a resident of the other Contracting State may be taxed by both Contracting States. However, paragraph (2) limits the rate of tax in the former Contracting State to a

rate not in excess of 10 percent of the gross amount of the dividend. This limitation does not affect the taxation of profits of the corporation which pays the dividend.

The ten percent limitation does not apply if the recipient, being a resident of the other Contracting State has a permanent establishment in the former Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment. In such a case, under paragraph (6) of Article 7 (Business Profits) the dividends are treated as industrial or commercial profits. If the recipient is a citizen of the Contracting State of which the corporation paying the dividend is a resident, that Contracting State may tax the recipient without regard to this article because of the saving clause of paragraph (3) of Article 4 (General Rules of Taxation). It is intended that, for purposes of Article 21 (Relief from Double Taxation), dividends paid by a corporation of a Contracting State are from sources within that Contracting State.

ART. 11. INTEREST

Paragraph (1) provides that interest derived by a resident of one Contracting State from sources within the other Contracting State may be taxed by both Contracting States. However, paragraph (2) limits the rate of tax in that other Contracting State to a rate not in excess of ten percent of the gross amount of the interest.

Paragraph (3) provides that interest beneficially derived by one of the Contracting States, or by an instrumentality of that Contracting State not subject to tax by that Contracting State on its income, will be exempt from tax by the other Contracting State. Under this rule, interest income derived by the Export-Import Bank of the United States and the Overseas Private Investment Corporation (OPIC) on loans made to Romanian residents will be exempt from tax in Romania. The exemption also applies

where a resident of a Contracting State receives interest income with respect to indebtedness, i.e., debt obligations, guaranteed, insured, or indirectly financed by that Contracting State or an instrumentality thereof. An example of indirect financing is where an instrumentality of a Contracting State provides funds in the form of an export credit or import credit to a resident thereof for purpose of permitting that resident to extend credit to a resident of the other Contracting State. This concept of indirect financing is also found in the exchange of notes accompanying our recent Japanese Convention.

Paragraph (4) provides that the rate limitation in paragraph (2) does not apply if the recipient of the interest, being a resident of one Contracting State, has a permanent establishment in the other Contracting State and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, under paragraph (6) of Article 7 (Business Profits) the interest will be treated as industrial or commercial profits of the recipient.

If excessive interest is paid to a related person, paragraph (5) provides that the rate limitations of the article do not apply to the excessive portion of the payment. The excessive portion may be taxed by each Contracting State according to its own laws, including the Convention where applicable. In the case of the United States, the excessive portion may, for example, be taxed as a dividend, in which case the provisions of Article 10 (Dividends) may apply.

Paragraph (6) defines interest for purposes of the Convention as income from bonds, Government securities, notes or other evidences of indebtedness, whether or not secured and whether or not carrying a right to participate in profits, and debt-claims of every kind, as well as all other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent.

Paragraph (7) sets forth the source rules for interest. With two exceptions, interest will be treated as income from sources within a Contracting State only if paid by that Contracting State, or a political subdivision or local authority thereof, of resident of that Contracting State. Under the first exception, if the person paying the interest (whether or not such person is a resident of one of the Contracting States) has a permanent establishment in one of the Contracting States in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by the permanent establishment, the interest will be deemed to be from sources within the Contracting State in which the permanent establishment is situated. This exception permits a Contracting State, under the proper circumstances, to impose a tax on interest paid by a permanent establishment therein including a permanent establishment in Romania which borrows money from a resident of the United States and bears the interest, the interest will be deemed to be from Romanian sources. Thus, Romania may tax such income, subject to the limitations of this article. As provided in paragraph (8) of Article 5 (Permanent Establishment), the rules of Article 5 will be applied to determine whether the resident of France has a permanent establishment in Romania. The United States will not, because of section 861(a)(1) of the Code, impose a tax on interest received by nonresident alien individuals or foreign corporations from a Romanian corporation having a permanent establishment in the United States unless 50 percent or more of the gross income of such corporation from all sources for the three-year period ending with the close of its taxable year preceding the payment of the interest was effectively connected with conduct of a trade or business within the United States.

Under the second exception, if the person paying the interest is a resident of one of the Contracting

States and has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and such interest is paid to a resident of the other Contracting State, and such interest is borne by such permanent establishment, the interest will be deemed to be from sources within the State in which the permanent establishment is situated. Interest described in the second exception will be exempt from tax in the Contracting State where the payor is a resident because, under Article 4 (General Rules of Taxation), a resident of one Contracting State not a citizen of the other Contracting State may be taxed by that other Contracting State only on income from sources within that other Contracting State. For example, if a resident of the United States has a permanent establishment in France which borrows money from a resident of Romania and bears the interest, the interest will be deemed to be from French sources. Thus, the United States may not tax such income if the recipient resident of Romania is not a citizens of the United States. As provided in paragraph (8) of Article 5 (Permanent Establishment), the rules of Article 5 will be applied to determine whether the resident of the United States has a permanent establishment in France.

This article is subject to the saving clause of paragraph (3) of Article 4 (General Rules of Taxation). Therefore, interest derived by a citizen of the source Contracting State may be taxed by that Contracting State without regard to this article.

ART. 12. ROYALTIES

Paragraph (1) provides that royalties derived by a resident of one Contracting State from sources within the other Contracting State may be taxed by both Contracting States. However, paragraph (2) limits the tax in that other Contracting State to a rate not to exceed 10 percent of the gross amount of cultural royalties or

15 percent of the gross amount of industrial royalties.

The term "cultural royalties" is defined as payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works, including copyrights of motion picture films or films or tapes used for radio or television broadcasting. The term "industrial royalties" is defined as payments of any kind made as consideration for the use of, or the right to use, patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights, or for knowledge, experience or skill (know-how). Cultural royalties and industrial royalties include gains derived from the sale, exchange, or other disposition of such property or rights to the extent the amounts realized on such sale, exchange or other disposition for consideration are contingent on the productivity, use, or disposition of the property or rights. If the amounts realized are not so contingent, the provisions of Article 13 (Capital Gains) may apply.

Paragraph (4) provides that tax rate limitations of paragraph (2) shall not apply if the recipient of the royalty, being a resident of one Contracting State, has a permanent establishment in the other Contracting State and the property or right giving rise to the royalty is effectively connected with the permanent establishment. In such a case, under paragraph (6) of Article 7 (Business Profits), the royalties will be treated as industrial or commercial profits.

If excessive royalties are paid to a related person, paragraph (5) provides that the provisions of the article do not apply to the excessive portion of the royalty. The excessive portion may be taxed by each Contracting State according to its own laws, including the Convention where applicable. Thus, the excessive portion may be treated as a dividend or interest, or in whatever other manner is appropriate.

Paragraph (6) provides that royal-

ties will be treated as income from sources within a Contracting State only to the extent they are payments made as consideration for the use of, or the right to use, property or rights described in paragraph (3) within that Contracting State or gains from the sale, exchange, or other disposition of such property or rights. This source rule is similar to the source rule in section 861(a)(4) of the Code.

This article is subject to the saving clause of paragraph (3) of Article 4 (General Rules of Taxation). Therefore, royalties derived by a citizen of the source Contracting State may be taxed by that Contracting State without regard to this article.

ART. 13. CAPITAL GAINS

Under paragraph (1), a resident of one Contracting State will be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets, e.g., stock or securities, whether such capital assets were acquired by inheritance, gift or any other manner. However, the exemption does not apply if (1) the recipient of the gain, being a resident of one Contracting State, has a permanent establishment in the other Contracting State and the property giving rise to the gain is effectively connected with the permanent establishment, or (2) the recipient of the gain, being an individual resident of one Contracting State, is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year. If the recipient of the gain is a citizen of the other Contracting State, that Contracting State may tax the recipient without regard to this article because of the saving clause of paragraph (3) of Article 4 (General Rules of Taxation). The term "day" for purposes of this article and the other physical presence tests contained in the Convention with regard to an individual means a calendar day during any portion of which the individual is physically present in the relevant Contracting State. Where Articles 6 (In-

come from Immovable Property), 8 (Shipping and Air Transport) or 12 (Royalties) apply to gains derived from the sale, exchange, or other disposition of rights or property which are covered by those articles, this article does not apply to such gains.

Paragraph (2) provides that gains which are effectively connected with a permanent establishment which the recipient has in the other Contracting State will be treated as industrial or commercial profits under paragraph (6) of Article 7 (Business Profits).

ART. 14. INDEPENDENT PERSONAL SERVICES

In dealing with the taxation of income from personal services the Convention distinguishes between "independent" and "dependent" personal services. The Convention also provides special treatment for individuals who are "entertainers."

Independent personal services are services performed by an individual in an independent capacity (for his own account) where he receives the income and bears the losses arising from such services. If an individual is an independent contractor he is considered as rendering independent personal services. Generally, services rendered by physicians, lawyers, engineers, architects, dentists and accountants performing personal services as sole proprietors or partners are independent personal services.

Under paragraph (1), income derived by an individual resident of one Contracting State from the performance of personal services in an independent capacity may be taxed by that Contracting State. However, under paragraph (2) such income derived from services performed in the other Contracting State may also be subject to tax in that other Contracting State if: (a) the individual is present therein for a period or periods aggregating 183 days or more in the taxable year; (b) the individual maintains a permanent establishment therein with which the income is effectively connected; or (c) the individual is an entertainer,

such as a theater, motion picture, radio or television artist, a musician, or an athlete, who is present therein for a period or periods aggregating more than 90 days in the taxable year or the gross income derived from his personal services as an entertainer in an independent capacity therein exceeds in the aggregate \$3,000 or its equivalent in Romanian lei during the taxable year. Under the saving clause of paragraph (3) of Article 4 (General Rules of Taxation), the other Contracting State may also tax any individual who is a citizen of that Contracting State without regard to this article.

Under paragraph (3), the exemption of an entertainer is determined without reference to the 90 day or \$3,000 test of paragraph 2(c) if the entertainer is a resident of one Contracting State and is present in the other Contracting State pursuant to a specific arrangement agreed to by the Contracting States. It is contemplated that such a specific arrangement would be agreed to by the Contracting States under the Cultural Relations Agreement between the United States and Romania signed on December 15, 1972 (23 U.S.T. 3741, T.I.A.S. No. 7524). It is not contemplated that an exchange of artists that was merely encouraged by both Governments, or a visit by a Romanian performer to the United States that was merely encouraged by an agency of the United States Government, would qualify as such a specific arrangement. However, a specific arrangement need not name the individual performer if he is a member of a group that is clearly identified by the arrangement, such as, for example, a city orchestra.

ART. 15. DEPENDENT PERSONAL SERVICES

Under paragraph (1), wages, salaries, and similar remuneration derived by an individual who is a resident of one Contracting State from labor or personal services performed as an employee, including income from services performed by an officer of a

corporation or company, may be taxed by that Contracting State, except as provided in Articles 18 (Governmental Functions), 19 (Teachers), and 20 (Students and Trainees).

Such income derived from labor or personal services performed in the other Contracting State may also be taxed in that other Contracting State unless: (a) the individual is present in that other Contracting State for a period or periods aggregating less than 183 days during the taxable year; (b) the individual is an employee of a resident of the first-mentioned Contracting State or of a permanent establishment maintained in the first-mentioned Contracting State by a resident of the other Contracting State; (c) the remuneration is not borne as such by a permanent establishment which the employer has in the other Contracting State; and (d) in the case of an entertainer, such as a theater, motion picture, radio or television artist, a musician, or an athlete, he is present in the other Contracting State for a period or periods aggregating less than 90 days in the taxable year and the gross income he derives as an employee in the other Contracting State aggregates less than \$3,000 or its equivalent in Romanian lei during the taxable year. Such income may also be taxed by that other Contracting State without regard to this article if the individual is a citizen of that Contracting State, because of the saving clause of paragraph (3) of Article 4 (General Rules of Taxation).

Under paragraph (3), the exemption of an entertainer is determined without reference to the 90 day and \$3,000 test of paragraph 2(d) if the entertainer is a resident of one Contracting State and is present in the other Contracting State pursuant to a specific arrangement agreed to by the Contracting States. See the discussion under Article 14 (Independent Personal Services) for the requirements of a specific arrangement.

Under paragraph (4), remuneration derived by an individual from the performance of labor or personal serv-

ices performed as an employee aboard ships or aircraft operated by a resident of one Contracting State in international traffic will, notwithstanding paragraph (2), be exempt from tax by the other Contracting State if such individual (even if a resident of a State other than a Contracting State) is a member of the regular complement of the ship or aircraft.

ART. 16. PRIVATE PENSIONS AND ANNUITIES

Except as provided in Article 18 (Governmental Functions), pensions and other similar remuneration paid to an individual in consideration of past employment will be taxable under paragraph (1) only in the Contracting State of which he is a resident. Thus, private pensions and similar remuneration derived from sources within one Contracting State by an individual resident of the other Contracting State in consideration of past employment are exempt from tax in the first Contracting State. The term "pensions and other similar remuneration" is defined in paragraph (4) as periodic payments (other than social security payments in Article 17 (Social Security Payments)) made by reason of retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.

Paragraph (2) provides that alimony and annuities paid to an individual resident of a Contracting State will be taxable only in that Contracting State. The term "annuities" is defined in paragraph (5) as 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 for services rendered).

The term "alimony" is defined in paragraph (6) as periodic payments made pursuant to a decree of divorce or compulsory support, separate maintenance agreement, or support or separation agreement which are taxable to the recipient under the internal

laws of the Contracting State of which he is a resident. Thus, the term "alimony" would not include a payment which would not be taxable to the recipient under the laws of the Contracting State in which he is a resident even though such payment is made pursuant to a decree of divorce or of separate maintenance. The explicit reference to a decree of compulsory support does not appear in prior United States conventions, but is consistent with section 71 of the Code.

Paragraph (3) provides that a resident of one Contracting State who receives child support payments from a resident of the other Contracting State will be exempt from tax on such payments in both Contracting States. The term "child support payments" is defined in paragraph (7) as periodic payments for the support of a minor child made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement.

The exemptions provided by this article for pensions and other similar remuneration, alimony, annuities and child support payments are subject to the saving clause of paragraph (3) of Article 4 (General Rules of Taxation). Therefore, individuals who are citizens or residents of a Contracting State may be taxed by that Contracting State without regard to this article.

ART. 17. SOCIAL SECURITY PAYMENTS

This article provides that social security payments and other public pensions, e.g., railroad retirement benefits, paid by one Contracting State to an individual who is a resident of the other Contracting State will be exempt from tax in both Contracting States. Payments described in Article 18 (Governmental Functions) are not covered by this article.

Under paragraph (2) of Article 28 (Termination), this article may be terminated by either Contracting State at any time after the Convention enters into force.

ART. 18. GOVERNMENTAL FUNCTIONS

Under this article, wages, salaries, and similar remuneration, including annuities or similar benefits, paid from public funds of one Contracting State to a citizen of that Contracting State for labor or personal services performed as an employee of the national government of that Contracting State, or any agency thereof, in the discharge of functions of a governmental nature will be exempt from tax by the other Contracting State.

In order to avoid a potential conflict as to what constitutes governmental functions, the second sentence of this article provides that labor or personal services performed by a citizen of one Contracting State shall be treated by the other Contracting State as performed in the discharge of governmental functions if such labor or personal services would be treated under the internal laws of both Contracting State as so performed. Thus, compensation paid in connection with industrial or commercial activity is treated the same as compensation received from a private employer. This article does not include remuneration paid by a political subdivision or a local authority thereof within the exemption.

If the citizen becomes a citizen of, or acquires immigrant status in, the other Contracting State, that other Contracting State may tax the individual without regard to this article. See paragraphs (3) and (4)(b) of Article 4 (General Rules of Taxation).

ART. 19. TEACHERS

Paragraph (1) provides that, if a resident of one Contracting State is invited by the other Contracting State, a political subdivision or local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed two years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational insti-

tution, and if such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at the university or educational institution will be exempt from tax by that other Contracting State for a period not exceeding two years from the date of his arrival in that other Contracting State.

Since a temporary visit may be of such a duration that an individual may lose his status as a resident of the Contracting State of which he was a resident at the time he became eligible for the benefits of this article, the individual need only be a resident of such Contracting State at the beginning of his visit. However, if the individual becomes a citizen of, or acquires immigrant status in, the other Contracting State, that other Contracting State may tax the individual without regard to this article. See paragraphs (3) and (4) (b) of Article 4 (General Rules of Taxation). If the individual's visit exceeds a period of two years from the date of his arrival, the exemption applies only to the income received by the individual before the expiration of such two year period.

The article does not apply to income from research undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ART. 20. STUDENTS AND TRAINEES

Paragraph (1) provides that an individual who is a resident of one Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present therein for the primary purpose of studying at a university or other recognized educational institution, securing training required to qualify him to practice a profession or professional specialty, or studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization, will be exempt from tax by that other Contracting State for a period

not exceeding five taxable years from the date of his arrival in that other Contracting State on:

(1) Gifts from abroad for the purpose of his maintenance, education, study, research, or training;

(2) The grant, allowance, or award; and

(3) Income from personal services performed in the other Contracting State not in excess of \$2,000 or its equivalent in Romanian lei for any taxable year.

Under paragraph (2), an individual who is a resident of one Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present therein as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or studying at a university or other recognized educational institution in that other Contracting State, will be exempt from tax by that other Contracting State on income from personal services not in excess of \$5,000 or its equivalent in Romanian lei for a period not exceeding one year.

Under paragraph (3), an individual who is a resident of one Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present therein for a period not exceeding one year, as a participant in a program sponsored by the other Contracting State, for the primary purpose of training, research, or study, will be exempt from tax by the other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of \$10,000 or its equivalent in Romanian lei.

The first sentence of paragraph (4) provides that the benefits provided in

paragraph (1) and the benefits provided under Article 19 (Teachers), when taken together, may extend only for such period of time, not to exceed five taxable years from the date of the individual's arrival, as may reasonably or customarily be required to effectuate the purpose of the visit. The second sentence of paragraph (4) makes it clear that the benefits provided by Article 19 (Teachers) will not be available to an individual if, during the immediately preceding period, the individual enjoyed the benefits provided by paragraph (1).

If an individual qualifies for the benefits of more than one of the provisions of Articles 19 (Teachers) and 20 (Students and Trainees), such individual may choose the most favorable provision but may not claim the benefits of more than one provision in any taxable year as a means of avoiding the limitations provided. Thus, for example, an individual who comes to the other Contracting State for the primary purpose of studying may be able to qualify under either paragraph (2) or (3). However, he cannot combine the maximum exclusion limits in those two paragraphs to exclude \$15,000 during the taxable year. If the individual becomes a citizen of, or acquires immigrant status in, the other Contracting State, that other Contracting State may tax the individual without regard to this article. See paragraphs (3) and (4) (b) of Article 4 (General Rules of Taxation).

ART. 21. RELIEF FROM DOUBLE TAXATION

In order to avoid double taxation each Contracting State agrees in this article to provide to its citizens or residents a credit against its taxes for taxes paid by such persons to the other Contracting State. The United States agrees to allow a United States citizen or resident as a credit against United States tax an appropriate amount of Romanian tax 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 principles of paragraph (1)). The credit will not exceed the portion of United States tax which such citizen's or resident's net income (i.e., taxable income) from sources within Romania or on his income from sources outside of the United States bears to his entire net income for the same taxable year. This provision does not require the United States to maintain a per-country and overall limitation in the future so long as the general principle of a foreign tax credit remains in effect.

In computing the credit for U.S. purposes, the Romanian taxes referred to in paragraph (1)(a) of Article 1 (Taxes Covered) will be considered to be income taxes. Thus, for example, among the creditable Romanian taxes is the tax on enterprises other than mixed companies or state enterprises, including the tax on foreign commercial representatives—even though the tax applies to income imputed to the representative under a schedule based on the number of employees in the representative's office, and thus might not be creditable under section 901 of the Code. It is intended that any income of a resident of the United States which has been subject to such a tax by Romania in accordance with the Convention will be treated as income from Romanian sources.

This article also provides that Romania will allow its citizens and residents a credit, under its law, as it may be amended from time to time, against their Romanian tax for taxes paid to the United States. The language as to the tax credit to be allowed by Romania is generally parallel to the language with respect to the United States.

ART. 22. NONDISCRIMINATION

Paragraph (1) provides that a citizen of one Contracting State who is a resident of the other Contracting State shall not be subjected in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof. The determination whether there

is more burdensome taxation is to be made by comparing the treatment of individuals who are in comparable positions. Thus, for example, a citizen of Romania who is a resident of the United States and who otherwise meets the requirements specified in section 911 of the Code would under this article be eligible for the benefits of section 911 even though not a citizen of the United States. On the other hand, just as a United States citizen who becomes a nonresident alien at any time during a taxable year or whose spouse is a nonresident alien at any time during a taxable year cannot file a joint return for that year, a Romanian citizen would not be entitled to joint return with his spouse if either is a nonresident alien at any time during the taxable year.

Paragraph (2) provides that one Contracting State may not impose more burdensome taxes on residents who are citizens of the other Contracting State or on permanent establishments of residents of the other Contracting State than it generally imposes on citizens or permanent establishments of residents of third States carrying on the same activities.

Paragraph (3) prohibits one Contracting State from subjecting a corporation of such 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 to any taxation or any requirement connected with taxation which is other or more burdensome than those applicable to corporations of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly or partly owned or controlled by one or more residents of a third State.

The criterion in paragraphs (2) and (3) is in terms of residents of third States, or permanent establishments of and corporations owned or controlled by, residents of third States, rather than to citizens or residents of that Contracting State, because the Romanian taxation of other foreign busi-

nesses is a more relevant comparison than Romanian taxation of domestic businesses which are frequently state enterprises. However, paragraphs (2) and (3) do not require a Contracting State to grant to citizens or permanent establishments of residents of the other Contracting State, or to corporations owned or controlled by such residents, tax benefits granted by special agreements, e.g., bilateral income tax conventions, to citizens or residents of a third State or corporations owned or controlled by such residents.

Under paragraph (3) of Article 1 (Taxes Covered), the provisions of this article extend to all taxes of every kind whether imposed at the national, state, or local level.

ART. 23. MUTUAL AGREEMENT PROCEDURE

When a resident of one Contracting State considers that action of one or both Contracting States results or will result for him in taxation not in accordance with the Convention, such resident may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or citizen. A resident of a Contracting State need not, although it is anticipated that in the normal situation he will, exhaust his other administrative or judicial remedies prior to resorting to the use of the mutual agreement procedure. If the claim is considered to have merit by the competent authority, that competent authority must endeavor to come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with the Convention.

Paragraph (2) requires the competent authorities of the two Contracting States to endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of the Convention. In particular, the competent authorities may agree to the same attribution of industrial or com-

mercial profits to a resident of one Contracting State and its permanent establishment situated in the other Contracting State; the same allocation of income, deductions, credits, or allowances between a resident of one Contracting State and a related person and to the readjustment of taxes imposed by each Contracting State to reflect such allocation; the same determination of the source of particular items of income; and the same characterization of particular items of income.

Under paragraph (3), in implementing the provisions of this article, the competent authorities may communicate with each other directly and, when advisable, meet together for an exchange of opinions.

Under paragraph (4), in cases in which the competent authorities reach an agreement, taxes will be imposed on such income, and refund or credit of taxes allowed, by the Contracting States in accordance with such agreement. This permits the issuance of a refund or credit notwithstanding procedural barriers otherwise existing under a Contracting State's law, such as the statute of limitations.

ART. 24. EXCHANGE OF INFORMATION

Paragraph (1) provides for a system of administrative cooperation between the competent authorities of the two Contracting States by requiring an exchange of information necessary for carrying out the provisions of the Convention or for the prevention of fraud or for the administration of statutory provisions concerning taxes to which the Convention applies. The competent authorities may exchange information in connection with tax compliance generally, not merely illegal acts or crimes.

Under paragraph (2) information exchanged must be treated as secret except that it may be disclosed to any person charged with, or made part of a public record with respect to, the assessment, collection, enforcement of, or litigation with respect to, the taxes

to which the Convention applies. Thus, disclosure is not prohibited as a part of a public proceeding before a court or administrative body.

The article provides two limitations on what kind of information can be exchanged. Under paragraph (1), the information must be of a class that can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes. Thus, a Contracting State requested to furnish information will use the standard it uses in the enforcement of its own laws by its administrative and judicial authorities, treating the tax of the Contracting State with respect to which the request relates as if it were a tax of the Contracting State requested to furnish the information and were being imposed by such Contracting State. Under paragraph (3), no information will be exchanged which would be contrary to public policy.

Under paragraph (4), depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts, or writings) shall be provided by the competent authority of a Contracting State if specifically requested by the competent authority of the other Contracting State to the same extent that such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes. The standard to be used by a Contracting State, when requested to provide such depositions and documents, is the same standard as described above under paragraph (1).

Although implicit in any tax convention providing for exchange of information, paragraph (5) provides that any depositions and evidence which may be furnished in accordance with this article shall not be withheld by reason of any doctrine of law under which international judicial assistance is not accorded in tax matters.

Paragraph (6) provides for the exchange of information on either a routine basis or on request with reference

to particular cases. The competent authorities may agree on the list of information to be furnished on a routine basis.

ART. 25. MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR OFFICES

This article provides that nothing in the Convention will affect the fiscal privileges of members of diplomatic missions and consular offices under the general rules and norms of international law or under the provisions of special agreements. This is merely a special case of the general rule provided in paragraph (2) of Article 4 (General Rules of Taxation).

ART. 26. ASSISTANCE IN COLLECTION

This article provides for mutual assistance in the collection of taxes where required to insure that the benefits of the Convention will only be extended to persons entitled to such benefits. It does not in any way affect rights of residents of the Contracting States under the Convention.

Paragraph (1) provides that each Contracting State will endeavor to collect on behalf of the other Contracting State such taxes imposed by that other Contracting State as will ensure that any exemption or reduced rate of tax granted under the Convention will not be enjoyed by persons not entitled to those benefits. However, paragraph (2) makes clear that this does not impose on a Contracting State the obligation to carry out measures at variance with the laws or administrative practices of either Contracting State with respect to collection of its own taxes.

ART. 27. ENTRY INTO FORCE

This article provides that the Convention is subject to ratification and for the exchange of instruments of ratification. The Convention will enter into force one month after the date of exchange of such instruments of ratification. The provisions of the Convention shall first have effect with respect to income of calendar years or taxable years beginning (or in the case of

taxes payable at source, payments made) on or after January 1, 1974. It is intended for purposes of this article and Article 28 (Termination) that the reference to calendar years applies only to cases where the taxable year is the calendar year.

ART. 28. TERMINATION

Paragraph (1) provides that the Convention will continue in effect indefinitely, but that it may be terminated by either Contracting State at any time after five years from the date it enters into force. A Contracting State seeking to terminate the Convention must give notice at least six months before the end of the calendar year through diplomatic channels. If the Convention is terminated, such termination will be effective with respect to income of calendar years or taxable years beginning (or, in the case of taxes payable at source, payments made) on or after January 1 next following the expiration of the six month period.

Under paragraph (2), the provisions of Article 17 (Social Security Payments) may be terminated by either Contracting State at any time after the Convention enters into force by prior notice given through diplomatic channels.

United States—United Kingdom Income Tax Convention Not Applicable to Southern Rhodesia or to Yemen

In response to inquiries the Treasury Department announced that the income tax convention between the United States and the United Kingdom, as extended in 1959 to Southern Rhodesia (then part of the Federation of Rhodesia and Nyasaland) [1960-2 C.B. 653] has not applied to Southern Rhodesia since January 1, 1974. The extension of the U.S.-U.K. tax treaty to Southern Rhodesia was terminated by the United States, effective January 1, 1974, by diplomatic note to the Government of the United Kingdom

in accordance with the procedure established in the convention.

The Treasury also announced that the income tax convention between the United States and the United Kingdom as extended in 1959 to the Peoples Democratic Republic of Yemen (then part of Aden) has been inapplicable to the People's Democratic Republic of Yemen since that country became independent on November 30, 1967. The government of Yemen did not take the necessary steps to affirm that it was assuming the obligation of the income tax convention. The convention is therefore considered inapplicable to the People's Democratic Republic of Yemen by the United States.

(Filed by the Office of the Federal Register on July 28, 1976, 8:45 a.m., and published in the issue of the Federal Register for July 29, 1976, 41 F.R. 31578)

Subpart B.—Legislation and Related Committee Reports

Public Law 94-273 94th Congress, S. 2445¹ April 21, 1976

An Act to provide permanent changes in laws necessary because of the October-September fiscal year.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that this Act may be cited as the "Fiscal Year Adjustment Act."

SEC. 2. The following provisions of law are amended by deleting "June," wherever it appears, and inserting "September" in lieu thereof:

* * * * *

(7) section 2 of the Land and Water Conservation Fund Act, as amended (16 U.S.C. 4601-5) [Pub. L. 88-578, 1964-2 C.B. 654];

* * * * *

(17) section 402 of the Act of November 13, 1966 (31 U.S.C. 757f)

¹ This publication of the law is restricted to excerpts involving tax matters; Senate Report No. 94-469 and House Report No. 94-1000 are not published.

[Pub. L. 89-809, 1966-2 C.B. 656], except for the reference to June 30, 1967;

* * * * *

SEC. 3. The following provisions of law are amended by deleting "July," wherever it appears, and inserting "October" in lieu thereof—

* * * * *

(4) sections 5(b) and 201(b) of the Land and Water Conservation Fund Act (16 U.S.C. 4601-7(b) and 4601-11(b)) [Pub. L. 88-578, 1964-2 C.B. 654];

* * * * *

SEC. 5. The following provisions of law are amended by deleting "December," wherever it appears, and inserting "March" in lieu thereof—

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(4) section 103(a) of the Act of June 6, 1972 (31 U.S.C. 1203(a)) [Pub. L. 92-310, 1972-2 C.B. 670];

* * * * *

SEC. 12. The following provisions of law are amended by deleting "March" and inserting "June" in lieu thereof—

* * * * *

(2) section 105(a) (2) of the Act of October 20, 1972 (31 U.S.C. 1224 (a) (2)) [Pub. L. 92-512, 1972-2 C.B. 684]; and

* * * * *

SEC. 18. Section 209(e) (1) of the Highway Revenue Act of 1956 (23 U.S.C. 120 note) [Pub. L. 627, 1956-2 C.B. 1150], is amended by deleting "March" and "June 30" and inserting "June" and "September 30," respectively, in lieu thereof.

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SEC. 38. Sections 6(a) (1) (D) and (E) of the Alaska Native Claims Settlement Act (43 U.S.C. 1605) [Pub. L. 92-203, 1972-1 C.B. 490] are amended to read as follows:

"(D) \$40,000,000 during the period beginning July 1, 1976, and ending September 30, 1976; and

"(E) \$30,000,000 during each of the