

LEGAL NOTICE NO. 168

REPUBLIC OF TRINIDAD AND TOBAGO

THE INCOME TAX ACT, CHAP. 75:01

ORDER

MADE BY THE PRESIDENT UNDER SECTION 93(1) OF THE INCOME TAX ACT

THE DOUBLE TAXATION RELIEF (BRAZIL) ORDER, 2008

WHEREAS it is provided by subsection (1) of section 93 of the Income Tax Act that if the President by Order declares that arrangements specified in the Order have been made with the Government of any country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any written law:

And whereas by Convention dated 23rd July, 2008 and Protocol dated 23rd July, 2008 made between the Government of the Republic of Trinidad and Tobago and the Government of the Federative Republic of Brazil arrangements were made *inter alia* for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

Now, therefore, the President in pursuance of the said subsection (1) of section 93 of the Income Tax Act is pleased to order, and it is hereby ordered as follows:

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| Citation | 1. This Order may be cited as the Double Taxation Relief (Brazil) Order, 2008. |
| Convention between the Government of the Republic of Trinidad and Tobago and the Government of the Federative Republic of Brazil
Schedule | 2. It is hereby declared—
<ul style="list-style-type: none">(a) that the Convention and Protocol specified in the Schedule have been made with the Government of the Federative Republic of Brazil; and(b) that it is expedient that the said Convention and Protocol shall have effect. |

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF
THE REPUBLIC OF TRINIDAD AND TOBAGO
AND THE GOVERNMENT OF
THE FEDERATIVE REPUBLIC OF BRAZIL
FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT
TO TAXES ON INCOME AND
FOR THE ENCOURAGEMENT OF
BILATERAL TRADE
AND INVESTMENT

THE REPUBLIC OF TRINIDAD AND TOBAGO AND THE FEDERATIVE REPUBLIC OF BRAZIL, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and for the encouragement of bilateral trade and investment have agreed as follows:

ARTICLE 1

PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

TAXES COVERED

1. The taxes which are the subject of this Convention are:

- (a) in the case of Trinidad and Tobago, the corporation tax, the income tax, the un-employment levy, the petroleum profits tax and the supplemental petroleum tax (hereinafter referred to as "Trinidad and Tobago tax");
- (b) in the case of Brazil, the federal income tax (hereinafter referred to as "Brazilian tax").

2. This Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes referred to above. The competent authorities of the Contracting States shall notify each other of any significant changes which have been made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:

- (a) the term "Trinidad and Tobago" means the Archipelagic State of Trinidad and Tobago, comprising the several islands of Trinidad and Tobago, its archipelagic waters, territorial sea and airspace thereof, together with the adjacent submarine areas of the Exclusive Economic Zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign or other rights in accordance with the laws of Trinidad and Tobago and with international law;

- (b) the term “Brazil” means the continental and insular territory of the Federative Republic of Brazil and the respective airspace above, and includes its territorial sea as defined by the United Nations Convention on the Law of the Sea, and the corresponding sea bed and sub-soil, as well as any maritime area beyond the territorial sea, including the sea bed and the sub-soil, to the extent that in that area Brazil in accordance with international law exercises rights with respect to the exploration and exploitation of the natural resources;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Trinidad and Tobago or Brazil, as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “international traffic” means any transport by ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term “competent authority” means:
 - (i) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorized representative;
 - (ii) in the case of Brazil, the Minister of Finance, the Secretary of Federal Revenue or their authorized representatives;
- (i) the term “national” means:
 - (i) any individual possessing the nationality of a Contracting State;
 - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
- (j) the terms “paid”, “distributed” and “received” when used with respect to income shall include amounts “credited”;
- (k) the term “agency or instrumentality” means an Organisation or company which is wholly owned and controlled by the Government of a Contracting State or any political subdivision or local authority thereof and which is organised under the laws of that State for the purpose of pursuing the objectives of that Government, subdivision or authority.

2. In the application of this Convention at any time by a Contracting State any term not defined herein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that Contracting State for the purposes of the taxes which are the subject of this Convention, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof or any agency or instrumentality of any such State, subdivision or authority.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (“centre of vital interests”);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

PERMANENT ESTABLISHMENT

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

2. The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse in relation to a person providing storage facilities for others;
- (g) a store or other sales outlet;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (i) a building site, a construction, assembly, or installation project which exists for more than six months.

3. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. Notwithstanding the provisions of paragraphs 1 and 2, where a person, other than an agent of an independent status to whom paragraph 5 applies, is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State in respect of any activities which that person undertakes for the enterprise, if such person:

- (a) has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 3 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
- (b) has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

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

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

ARTICLE 6

INCOME FROM IMMOVABLE PROPERTY

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

2. The term "immovable property" shall have the meaning which it has under the laws of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7

BUSINESS PROFITS

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

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere in accordance with the provisions of the laws of that State.

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

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

ARTICLE 8

SHIPPING AND AIR TRANSPORT

1. Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall also apply to profits derived from participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

ASSOCIATED ENTERPRISES

Where:

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

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

ARTICLE 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but, if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 25 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and any item of income which under the laws of either of the Contracting States is treated as a distribution.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

6. Where a company which is a resident of a Contracting State having a permanent establishment in the other Contracting State, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provision of this Convention, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittances or deemed remittances shall not exceed 10 per cent.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 11

INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State but, if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraphs 1 and 2:

(a) interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State, political subdivision or local authority thereof or any agency or instrumentality (including a financial institution) of that other State, political subdivision or local authority, unless subparagraph (b) applies;

(b) interest from securities, bonds or debentures issued by the Government of a Contracting State, political subdivision or local authority thereof or any agency or instrumentality (including a financial institution) of that State, political subdivision or local authority, shall be taxable only in that State.

4. For the purposes of this Article the term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures, as well as any other income assimilated to income from money lent by the tax law of the Contracting State in which the income arises, and also includes interest paid as "remuneration on the company's equity capital" as defined in accordance with Brazilian tax law, but shall not include any item which is treated as a distribution under the provisions of Article 10 of this Convention.

5. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 (Business Profits) shall apply.

6. Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

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

8. The tax rate limitation provided for in paragraph 2 shall not apply to interest arising in a Contracting State and paid to a permanent establishment of an enterprise of the other Contracting State which is situated in a third State.

9. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 12

ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but, if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. For the purposes of this Article, the term "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films, tapes, video tapes, or other means of transmission or reproduction of images or sound for use in connection with television or radio, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case the provisions of Article 7 (Business Profits) shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment is situated.

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

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6, which is situated in the other Contracting State, may be taxed in that other State.

2. Gains from alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State. However, gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. Gains from the alienation of any property other than that referred to in paragraphs 1 and 2 may be taxed in both Contracting States.

ARTICLE 14

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State, unless the remuneration for such services or activities is paid by or on behalf of a resident of the other Contracting State or a permanent establishment located therein, when such income may also be taxed in the other Contracting State.

2. The term "professional services" includes especially independent scientific, technical, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1 remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the calendar year; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the Board of Directors or of any Council of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

ARTISTES AND SPORTSPERSONS

1. Notwithstanding the provisions of Articles 14 and 15 income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding paragraphs 1 and 2 of this Article, income derived from activities performed in a Contracting State by entertainers or sportsmen shall be exempt from tax in that Contracting State if the visit to that State is mainly supported by the other Contracting State, political subdivision, Government controlled institution or local authority thereof, or any agency or instrumentality of such State, subdivision, institution or authority.

ARTICLE 18

PENSIONS, ANNUITIES AND SOCIAL SECURITY PAYMENTS

1. Subject to the provisions of paragraph 2 of Article 19, pensions, other similar remuneration in consideration of past employment and annuities paid to a resident of a Contracting State may be taxed in that State.

2. However, such pensions and other similar remuneration and annuities may also be taxed in the other Contracting State if the payment is made by a resident of that other State or a permanent establishment situated therein.

3. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting State or a political subdivision or a local authority thereof shall be taxable only in that State.

4. As used in this Article:

- (a) the term “annuities” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth (other than for services rendered);
- (b) the term “pensions” means periodic payments made after retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.

ARTICLE 19

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, subdivision or authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority thereof to an individual in respect of services rendered to that State, subdivision or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State, a political subdivision or a local authority thereof.

ARTICLE 20

STUDENTS AND TRAINEES

1. Payments which a student or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned State, provided that such payments arise from sources outside that State.
2. In respect of grants, scholarships and remuneration from employment not covered by paragraph 1 of this Article, a student or trainee described in paragraph 1 shall, in addition, be entitled during such education or training to the same exemptions, reliefs or reductions in respect of taxes available to residents of the State which he is visiting.

ARTICLE 21

TEACHERS AND RESEARCHERS

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution in that first-mentioned State or under an official programme of cultural exchange, is present in that

State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research undertaken in the public interest at such institution shall be exempt from tax in that State on his remuneration for such activity, provided that the payment of such remuneration is derived by him from outside that State.

ARTICLE 22

OTHER INCOME

Notwithstanding the provisions of any other Article of this Convention, items of income of a resident of a Contracting State, wherever arising, which are not expressly mentioned in the foregoing Articles of this Convention may be taxed by each Contracting State in accordance with the provisions of its domestic law.

ARTICLE 23

ELIMINATION OF DOUBLE TAXATION

1. Where a resident of a Contracting State derives income which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall allow, subject to the provisions of its law regarding the elimination of double taxation, (which shall not affect the general principle hereof) as a deduction from the tax on the income of that resident an amount equal to the income tax paid in that other State.

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other State.

2. Where in accordance with any provision of this Convention income derived by a resident of a Contracting State is exempt from tax in that State, such State may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

ARTICLE 24

NON-DISCRIMINATION

1. Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

The provisions of paragraph 6 of Article 10 are not in conflict with the provisions of this paragraph.

3. Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowance, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

Except where the provisions of Article 9, paragraph 7 of Article 11, paragraph 7 of Article 12 apply, interest, royalties, and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

The provisions of the domestic legislation of the Contracting States that do not allow expenses paid by a permanent establishment to its head office to be deductible are not in conflict with the provisions of this paragraph.

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

6. In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the action of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24 to that of the Contracting State of which he is a national.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with this Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities may, through consultations, develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

ARTICLE 26

EXCHANGE OF INFORMATION

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

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 27

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

LIMITATION ON BENEFITS

This Convention shall not apply to any company, trust or partnership that is a resident of a Contracting State and is beneficially owned or controlled directly or indirectly by one or more persons who are not residents of that State, if the amount of the tax imposed on the income of the company, trust or partnership by that State is substantially lower than the amount that would be imposed by that State if all of the shares of the capital stock of the company or all of the interests in the trust or partnership, as the case may be, were beneficially owned by one or more individuals who were residents of that State.

ARTICLE 29

ENTRY INTO FORCE

Each Contracting State shall notify the other Contracting State, in writing and through diplomatic channels of the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect in the case of both Contracting States:

- (a) in respect of taxes withheld at source, on amounts paid, credited or remitted on or after the first day of January of the calendar year immediately following that in which the Convention enters into force; and
- (b) in respect of other taxes, for the taxable or fiscal year beginning on or after the first day of January of the calendar year immediately following that in which the Convention enters into force.

ARTICLE 30

TERMINATION

1. This Convention shall remain in force indefinitely, but either of the Contracting States, may, on or before June 30, in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through diplomatic channels, written notice of termination.

2. In such event this Convention shall cease to have effect in both Contracting States:

- (a) in respect of taxes withheld at source, on amounts paid, credited or remitted on or after the first day of January of the calendar year immediately following that in which the notice of termination is given; and
- (b) in respect of other taxes for the taxable or fiscal year beginning on or after the first day of January of the calendar year immediately following that in which the notice of termination is given.

In witness whereof the undersigned, being duly authorized thereto, have signed this Convention.

Done at Brazil, this 23rd day of July, 2008, in duplicate in the Portuguese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
REPUBLIC OF TRINIDAD AND TOBAGO

FOR THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL

Monica June Clement

Samuel Pinheiro Guimarães Neto

PROTOCOL

At the signing of the Convention between the Government of the Republic of Trinidad and Tobago and the Government of the Federative Republic of Brazil for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and for the Encouragement of Bilateral Trade and Investment (hereinafter referred to as "the Convention") both sides have agreed upon the following provisions which form an integral part of the Convention:

- (a) For the purposes of paragraph 1 of Article 2, the term "Brazilian tax" comprises also the "Social Contribution on Net Profits", ("Contribuição Social sobre o Lucro Líquido"), enacted by Law # 7689 of December 15, 1988.
- (b) For the purposes of paragraph 2 of Article 5, any payment of income arising in one of the Contracting States and made in respect of drilling activities to a resident of the other Contracting State other than to a permanent establishment situated in the first-mentioned State shall be subject to tax in the Contracting State in which the payment arises according to the laws of that State.
- (c) For the purposes of paragraph 3 of Article 12, the term "royalties" shall be considered to include payment of any kind received as a consideration for the rendering of technical assistance and technical services.

IN WITNESS WHEREOF the undersigned, being duly authorized thereto, have signed this Protocol.

Done at Brazil, this 23rd day of July, 2008, in duplicate in the Portuguese and English languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE
REPUBLIC OF TRINIDAD AND TOBAGO

FOR THE GOVERNMENT OF THE
FEDERATIVE REPUBLIC OF BRAZIL

Monica June Clement

Samuel Pinheiro Guimarães Neto

Made this 13th day of November, 2008.

A. LEUNG WOO-GABRIEL
Secretary to Cabinet