

LEGAL NOTICE NO. 348

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 (VENEZUELA) ORDER, 1997

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 31st July, 1996 and Protocol dated 31st July, 1996 made between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela arrangements were made *inter alia* for the avoidance of double taxation:

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 orders as follows:

1. This Order may be cited as the Double Taxation Relief (Venezuela) Order, 1997.
2. It is hereby declared-

- (a) that the Convention and Protocol specified in the Schedule have been made with the Government of the Republic of Venezuela; and
- (b) that it is expedient that the said Convention and Protocol shall have effect.

SCHEDULE

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

ARTICLE 1
Personal Scope

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

ARTICLE 2
Taxes Covered

(1) This Convention shall apply to taxes on income imposed on behalf of each Contracting State, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

(3) The existing taxes which are the subject of this Convention are:-

(a) in the case of Trinidad and Tobago, the corporation tax, the income tax, the unemployment levy, the petroleum profits tax, the supplemental petroleum tax, the business levy and the health surcharge (hereinafter referred to as "Trinidad and Tobago tax").

(b) in the case of Venezuela, the income tax and the business assets tax (hereinafter referred to as "Venezuelan tax").

(4) 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 existing taxes referred to above. At the end of each year, the competent authorities of the Contracting States shall notify each other

if any significant changes 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) (i) the term "Trinidad and Tobago" means the islands of Trinidad and Tobago; and

(ii) when used in a geographical sense, the term "Trinidad and Tobago" includes:

(A) the territorial sea thereof; and

(B) the seabed and subsoil of the adjacent submarine areas beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights, in accordance with Trinidad and Tobago legislation and international law concerning the continental shelf, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property, or activity to which this Convention is being applied is connected with such exploration or exploitation;

(b) the term "Venezuela" means the Republic of Venezuela.

- (c) the terms "a Contracting State" and "the other Contracting State" mean Trinidad and Tobago or Venezuela 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 authorised representative;
 - (ii) in the case of Venezuela, the Integrated National Service of Tax Administration

(Servicio Nacional Integrado de Administracion Tributaria - SENIAT), its authorized representative or the authority which is designated by the Minister of Finance as the competent authority for the purposes of this Convention.

(i) the term "national" means:

- (i) any individual possessing the nationality of a Contracting State;
- (ii) any legal person, partnership and 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".

(2) In the application of this Convention by a Contracting State any term not defined herein shall unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Resident

(1) For purposes of this Convention, the term "resident of a Contracting State" means:

- (a) any person, who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature;
- (b) the Government of that State or a political subdivision thereof or any agency or instrumentality of any such Government, 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 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 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 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 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 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 drilling rig or ship used for, or in connection with, the exploration or development of natural resources;
- (j) a building site or construction project but only where such site or project continues for a period of more than six (6) months; and
- (k) an assembly, dredging or installation project but only where such project continues for a period of more than three (3) 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 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;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of delivery for 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 a 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 persons 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 shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph.

(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 law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships 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 permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than as a reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or to any of its other offices, as royalties, fees or other similar payments in return for the use of patents or other

rights, or by way of commission, for specific services performed or for management, or, except in the case of a bank, as interest on monies lent to the permanent establishment.

(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) For the purpose of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year, unless there is good and sufficient reason to the contrary.

(6) 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) The provisions of this Convention shall not affect the application of the reciprocal exemption from taxes on income with respect to profits from the operation of aircraft in international traffic as provided in the Convention between Venezuela and Trinidad and Tobago signed at Caracas on July 30, 1985.

(2) Profits from the operation of ships in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(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 paragraph (2) shall also apply to profits derived from participation in a pool, a joint business or an international operating agency.

ARTICLE 9**Associated Enterprises**

(1) Where:

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

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

authorities of the Contracting State shall if necessary consult each other.

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 recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 5 percent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 25 percent of the capital of the company paying the dividends;

(b) 10 percent of the gross amount of the dividends in all other cases.

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

(3) The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and in the case of Trinidad and Tobago, any item of income which under the laws of Trinidad and Tobago 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 (Business Profits) 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 5 percent provided that such tax shall not apply to the extent that the profits or income have been reinvested (other than in the replacement of fixed assets) in the other Contracting State.

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 recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 percent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) interest, mentioned in paragraph (1), shall be taxable only in the Contracting State where the recipient of the interest is a resident if one of the following requirements is fulfilled:

(a) the recipient thereof is the Government of a Contracting State, the Central Bank of a Contracting State or a political subdivision or local authority thereof;

(b) the interest is paid by any of the persons mentioned in sub-paragraph (a);

(c) the interest is paid in respect of a loan granted or guaranteed for a period of not less than three (3) years by an institution owned or controlled by the Government of a Contracting State and formed for the purpose of economic development or for the financing of external trade and certified as such

by the relevant competent authority.

(4) 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 but shall not include any item which is treated as a distribution under the provisions of Article 10 (Dividends) of this Convention. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article."

(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 cases 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.

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 recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 percent of the gross amount of the royalties.

(3) (a) The term "royalties" as used in this Article 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;

(b) The term does not include any royalties, rentals, or other amounts paid in respect of the operation of mines, oil or gas wells, quarries, or other natural resources.

(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 cases 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 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.

ARTICLE 13
Management Charges

(1) Management Charges paid by a resident of a Contracting State to an enterprise of the other Contracting State may be taxed in that other State.

(2) However, such management charges may also be taxed in the Contracting State in which the person paying the management charges is a resident and according to the laws of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the charges.

(3) The term "management charges" as used in this Article means charges made for the provision of management services, personal services, technical or managerial skills and, in the case of Venezuela, technical assistance (as defined in the laws of Venezuela) in relation to the furnishing of such services and skills.

(4) The provisions of paragraphs (1) and (2) shall not apply if the enterprise to which the management charges are paid, being an enterprise of a Contracting State, carries on business in the other Contracting State from which the management charges are paid, through a permanent establishment situated therein and the services for which the management charges are paid are effectively connected with such permanent establishment. In such cases the provisions of Article 7 (Business Profits) shall apply.

(5) Where by reason of a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the management charges, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14
Independent Personal Services

(1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that Contracting State unless:

- (a) such services are performed in the other Contracting State; and
- (b) the remuneration earned in the other Contracting State in the year of income exceeds a gross amount equivalent to US \$6,000.00; and
- (c) the remuneration is paid by or on behalf of a resident of the other Contracting State or a permanent establishment located 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 (Directors' Fees), 18 (Pensions and Annuities), 19 (Government Service), 20 (Students and Trainees) and 21 (Teaching and Research), 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 year of income, 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 of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17
Artistes and Athletes

(1) Notwithstanding the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services) income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 14 (Independent Personal Services), 15 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) Notwithstanding paragraphs 1 and 2, income derived from activities performed in a Contracting State by public entertainers or athletes shall be exempt from tax in the Contracting State if the visit to that State is substantially supported by the other Contracting State and the public entertainer or athlete is certified as qualified under this provision by the appropriate authority of the sending State.

ARTICLE 18
Pensions and Annuities

Subject to the provisions of paragraph (2) of Article 19 (Government Service), pensions, annuities and other similar payments derived from sources within a Contracting State may be taxed in that State.

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 (Dependent Personal Services), 16 (Directors' Fees) and 18 (Pensions and Annuities) 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) An individual who is or was a resident of a Contracting State immediately before his visit to the other Contracting State and who is temporarily present in the other Contracting State for the primary purpose of:-

- (a) studying in that other Contracting State at a university or other educational institution approved by the appropriate educational authority of that Contracting State;
- (b) securing training required to qualify him to practice a profession or for acquiring a vocation or a professional or technical specialty; or
- (c) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious charitable, scientific, literary or educational organisation, or as a participant in other programmes sponsored by such an organisation

shall be exempt from tax in that other Contracting State in respect of:

- (i) remittances from abroad for the purposes of his maintenance, education, training or practice;
- (ii) remuneration for personal services performed in that other Contracting State for the purpose of practical training provided that this benefit shall in no event exceed a period of two (2) consecutive years;

(iii)the amount of such grant, allowance or award.

ARTICLE 21
Teaching and Research

(1) An individual who is or was a resident of a Contracting State at the beginning of his visit to the other Contracting State and who, at the invitation of the Government of that other Contracting State or of a university or other educational institution situated in that other Contracting State and approved by the appropriate educational authority of that other Contracting State visits that other Contracting State for a period not exceeding two (2) years for the primary purpose of teaching or research at such university or other educational institution shall be exempt from tax by that other Contracting State on his income from personal services for teaching or research at such university or other educational institution for a period not exceeding two (2) years from the date of his arrival in that other Contracting State.

(2) The exemption granted under paragraph (1) shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or specific persons.

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) In the case of Trinidad and Tobago, double taxation shall be avoided as follows:-

(a) Subject to the provisions of the law of Trinidad and Tobago regarding the allowance of a credit against Trinidad and Tobago tax of tax paid in a territory outside Trinidad and Tobago (which shall not affect the general principle hereof):

(i) Venezuelan tax paid under the laws of Venezuela and in accordance with this Convention, whether directly or by deduction on profits or income from sources within Venezuela (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Trinidad and Tobago tax computed by reference to the same profits or income by reference to which the Venezuelan tax is computed;

(ii) in the case of a dividend paid by a company which is a resident of Venezuela to a company which is a resident of Trinidad and Tobago and which controls directly or indirectly at least 25 percent of the voting power in the company paying the dividends the credit shall take into account, in addition to any Venezuelan tax creditable under (a) (i), the Venezuelan

tax paid by the company paying the dividends in respect of the profits out of which such dividend is paid.

(b) The credit, however, shall in no case exceed that part of the tax, as computed before the credit is given, which is appropriate to the income which may be taxed in Venezuela.

(2) In the case of Venezuela, double taxation shall be avoided as follows:

Where a resident of Venezuela derives income which, in accordance with the provisions of this Convention may be taxed in Trinidad and Tobago, such income shall be exempted from Venezuelan tax.

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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions of Article 9 (Associated Enterprises), paragraph (7) of Article 11 (Interest), paragraph (6) of Article 12 (Royalties) 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.

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

(5) The provisions of this Article shall, notwithstanding the provisions of Article 2 (Taxes Covered) apply to taxes of every kind and description.

ARTICLE 25
Mutual Agreement Procedure

(1) Where a person considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with the provisions of the 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 (Non-Discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

(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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(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. They may also consult together for the elimination of double taxation in cases not provided for in 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 shall 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, in particular for the prevention of fraud or evasion of such taxes. The competent authorities shall, through consultations, develop appropriate conditions, methods and techniques concerning the matters respecting which such exchange shall be made, as well as exchange of information regarding avoidance of tax where appropriate. The exchange of information is not restricted by Article 1 (Personal Scope). Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, 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. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that

or of the other Contracting State;

- (b) to supply information which is not obtainable or which may not be disclosed 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**Diplomatic Agents and Consular Officers**

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

ARTICLE 28
Entry into Force

Each Contracting State shall notify the other in writing 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:

- (a) in respect of taxes withheld at source on amounts paid, credited or remitted to non-residents on or after January 01, in the calendar year next following that in which the later of these notifications is given;
- (b) in respect of other taxes for the year of income commencing January 01, in the calendar year next following that in which the later of these notifications is given.

ARTICLE 29

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 (5) 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:

(a) in respect of taxes withheld at source on amounts paid, credited or remitted to non-residents on or after January 01, in the calendar year next following that which the notice is given; and

(b) in respect of other taxes for the year of income commencing January 01, in the calendar year next following that in which the notice is given.

PROTOCOL

At the time of signing the Convention this day concluded between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion and Avoidance with respect to taxes on income and for the Encouragement of International Trade and Investment, the undersigned have agreed upon the following provisions which shall be an integral part of the Convention.

1. With respect to paragraph 1 of Article 4, it is understood that individuals and companies may be residents of Venezuela under the provisions of that paragraph notwithstanding the fact that they are liable to tax in Venezuela under the territorial system of income taxation applicable therein.

It is also understood that if Venezuela changes its present territorial tax system to a world-wide system of taxation the term "resident of a Contracting State" shall mean a person, who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of effective management or any other criterion of a similar nature and also includes the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority. The term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. In the case of Venezuela, Paragraph 3 of Article 7, would only be applied if Venezuela changes its

territorial tax system to a world-wide system of taxation. Meanwhile, for the purposes of the determination of the taxable profits of a permanent establishment, interest, interest, royalties and other disbursements may be deducted on the same terms and conditions as if they had been incurred by a resident enterprise.

3. Notwithstanding paragraph 2 of Article 23, in case Venezuela adopts a world-wide basis of taxation, double taxation shall be eliminated as follows:
 - a) Where a resident of Venezuela derives income which, in accordance with the provisions of this Convention, may be taxed in Trinidad and Tobago, Venezuela shall allow as a deduction from the tax on the income of that resident an amount equal to the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Trinidad and Tobago; and
 - b) Where in accordance with any provision of this Convention, income derived from a resident of Venezuela is exempt from tax in that State, Venezuela may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.
4. In the case of Venezuela, paragraph 3 of Article 24, would only be applied if Venezuela changes its territorial tax system to a world-wide system of taxation. Meanwhile, for the purposes of the determination of the taxable profits of an enterprise, interest, royalties and other disbursements may be

deducted on the same terms and conditions as if they had been incurred by a resident enterprise.

IN WITNESS WHEREOF the undersigned, duly authorized to that effect, have signed this Protocol.

DONE in duplicate at this 31st day of July, 1996 in the English and Spanish languages, each version being equally authentic.

FOR THE GOVERNMENT OF
THE REPUBLIC OF TRINIDAD
AND TOBAGO

FOR THE GOVERNMENT OF THE
REPUBLIC OF VENEZUELA