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A Model Treaty for the Age of BEPS

Reuven S. Avi-Yonah¹

Oz Halabi²

The OECD's Base Erosion and Profit Shifting (BEPS) project promises to bring about the most fundamental changes in the international tax regime since its inception in the 1920s. The fundamental idea behind the various BEPS projects is that the OECD has fully embraced the idea that double non taxation can have as deleterious consequences as double taxation should be reconsidered.³

The BEPS Action Plan, adopted by the OECD in July 2013, sets an ambitious time table for the various items, which are supposed to be achieved either by September 2014 or at the latest by December 2015. While the Action Plan items generally require coordinated action to amend the domestic laws of the member states, the last item envisages an effort to draft a new multilateral tax treaty. This is likely to be a difficult and prolonged process, so in the meantime we would like to offer some tentative suggestions about how the current OECD model should be revised to address not just double taxation but also double non taxation.

1. Action 1: Address the tax challenges of the digital economy

The most obvious challenge of the digital economy is that the PE threshold as embodied in the current treaties has become obsolete because it hinges on physical presence of the taxpayer in a source jurisdiction, either directly or through an agent. As many observers, including recently the French government⁴, have argued, this definition of a PE should be replaced with one that sets an absolute threshold of sales of good or services into the source jurisdiction. Such a threshold continues to protect MNEs from being taxed on isolated transactions while ensuring that they cannot escape source based taxation in jurisdictions in which they engage in extensive business activity. The language below is based on the Internet Tax Fairness Act and Sen. Baucus' legislative proposals.

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² SJD, University of Michigan; Former Acting Director, International Tax Division, Israel Tax Authority.

³ See Ault, Some Reflections on the OECD and the Sources of International Tax Principles, 70 Tax Notes Int'l 1195 (June 17, 2013).

⁴ Colin and Collin report.

2. Action 2: Neutralize the effects of hybrid mismatch arrangements

This action item most clearly reflects the OECD's new understanding that double non taxation is as harmful as double taxation. Specifically, as France, the UK, Denmark, Mexico and many non OECD countries have argued, there is no reason to allow a deduction for payments of interest or royalties if the income is not included and taxed in the residence jurisdiction. In the treaty context, the implication is that withholding taxes should not be reduced unless the recipient of the income is fully taxable on it in its country of residence. Such an approach might be opposed with policy and administrative arguments. For example, one argument is that a country should not disallow benefits provided by a treaty to a foreign investors where such an investor's home country provides tax holidays does a resident of country, benefiting its residents for exporting IP rights by excluding such income as a taxable income, should loss treaty benefits in the other country? Whether such a regime leads resident countries to forgo tax incentives as a mean of encouragement? And finally, how would the source country confirm that the recipient of the income is taxed in its country of residence on such income. The language below to achieve this result is based on the original US limitation of benefits provision from 1981.

3. Action 3: Strengthen CFC rules

This action item requires changes in domestic law, not in the treaties. One of us has argued elsewhere that a coordinated full inclusion regime is the most effective answer to BEPS.⁵ The only treaty issue is to the extent that some courts have ruled that CFC rules violate treaties,⁶ but we agree with the OECD position that the PE threshold was never designed to limit residence based taxation on a deemed dividend distributions as long as the shareholders residency country does not impose tax on the non-resident company (unless through a PE, and only to that portion of income attributable to the PE) and that CFC rules involve taxing resident shareholders, not the foreign corporation.⁷ Although it seems like no treaty revision is required to police CFC legislation countries may decide to determine, both under their domestic laws and under a treaty that a withholding tax shall be imposed on a corporation undistributed earnings. Such a regime can be incorporated in Article 10 of the treaty Model. We think that imposing tax on an distributed income of a corporation will serve all parties, i.e., the company's country of residence by allowing it to tax parked profits on a current basis, the shareholders country of residence by enabling it to assess its true and accurate budget, by allowing the appropriate amount of foreign tax credit and associating it with the appropriate income, and to the taxpayer that avoids the potential double taxation that may arise if the country of residence imposes tax prior to earning them by the shareholder and deferring the potential foreign tax credit to a later year, when the taxpayer may not have any foreign source income.

⁵ Avi-Yonah, *Hanging Together*.

⁶ RE 1325709, 25 April 2014, the Superior Court of Justice ruled that Brazil's CFC regime is not compatible with Article 7 of the OECD Model Convention.

⁷ OECD, *Commentary on Article 7*.

4. Action 4: Limit base erosion via interest deductions and other financial payment.

This action item requires changes in domestic law and tax treaties to extend thin capitalization type rules to other deductible payments like royalties and cost of goods sold and to incorporate such thin capitalization rules into the treaties to avoid treaty overrides.⁸ For a specific proposal, see Lowell and Wells, who argue convincingly that their proposal does not violate the non-discrimination provision in the treaties.⁹

5. Action 5: Counter harmful tax practices more effectively, taking into account transparency and substance

This action item is an extension of the original OECD harmful tax competition project. Its main treaty related aspects are the automatic exchange of information provisions, which are already the subject of a multilateral OECD treaty.¹⁰ Article 26 needs to be revised accordingly. Additionally, the foreign account tax compliance act (commonly known as FATCA) is spreading through detailed and administrative intergovernmental agreements (IGA) signed by the United States and the OECD member (and non-member) countries. The effect of such IGAs is, in general, to create a set of specific rules and guidance on how governments should exchange information on an automatic basis, the type of information, the form and the frequency such information should be exchanged. We argue that since FATCA, and its derivatives the IGAs, provide set of guidelines to implement Article 26 of the treaty this Article should be modified to include administrative procedures to support the automatic exchange of information requirements provided (and agreed upon) in the treaty so that not only the US and their counterparts will have binding procedure, but so will all members of the OECD.

6. Action 6: Prevent treaty abuse

This action item requires adoption of a limitation on benefits provision in the OECD model, as well as a general anti abuse rule. Both are provided below based on the US 1981 LOB and the OECD commentary on article 1. The OECD's limitation on benefits provision should be designed so that it will be an additional residency test to the one provided under Article 4. The additional test will distinguished between a "pure resident" to a resident as we further provide in the proposed Article 1 of the treaty. In particular, we propose that only such a "pure resident" should be entitled to the benefits of the treaty, whereas any person who is just a resident, under Article 4, but not under Article 1 will be entitled or subject only to specific Articles of the treaty. For example we argue that a resident should be covered by the articles regarding exchange of information, mutual agreement procedure, and assistance in collection of taxes and non-discrimination.

⁸ Halabi, domestic anti avoidance rule ant their interplay with tax treaties.

⁹ Lowell and Wells, Tax Law Review.

¹⁰ OECD Multilateral Exchange of Information and Administrative Assistance in Tax Matters Treaty; see also similar EU treaty [cite].

We propose that a person will be a “pure resident” only if that person is a resident of a contracting state and such person is either an individual or a company that is owned by such individuals or companies and that certain conditions are met. One of the proposed conditions is that in the case of chain of ownership, each entity in the chain will be subject to the same or similar tax rate in its country of residence. We believe that having a uniform tax rate requirement for qualifying under a treaty as a pure resident will reduce the likelihood of tax-rate-base tax planning and it will encourage countries to adopt a uniform tax rate. A uniform tax rate has many benefits which are not discussed herein and which are related to the necessity of foreign tax credit rules, controlled foreign corporation rules, inversion rules and so forth.

7. Action 7: Prevent the artificial avoidance of permanent establishment status

This refers to commissionaire arrangements and other ways to avoid the current definition of apax, but given the changes in the permanent establishment definition envisaged above to include remote sale and the transfer pricing changes below further revisions should not be necessary.

8. Actions 8,9,10: Assure that transfer pricing outcomes are in line with value creation

In our opinion the best way to address transfer pricing is by applying a formula to the residual in the profit split method, which is compatible with the Arm’s Length Standard embodied in the treaties. We would therefore merely reinsert OECD article 7(4) which enables the use of formulas whenever a subsidiary is deemed to be a dependent agent PE of its parent.¹¹

9. Action 11: Establish methodologies to collect and analyze data on BEPS and the actions to address it

We propose that all the information that is related to taxation (whether directly or indirectly so related) that is in the disposal of a competent authority should be exchange frequently if and to the extent the countries believe it will result in a better compliance of the taxpayer. In 2010, the OECD proposed a new form of coordination between governments and we think that this is the time to reintroduce that initiative.¹² The OECD proposed that countries will be better off, and taxpayer will be better off if the countries will engage in a joint audit procedure under which a multinational company will be audited by more than one country at the same time. We believe that joint audit will assist substantiating the BEPS goals by enabling the countries to have the same information, to examine such information together and to be able to determine the right tax consequences, together. A joint audit procedure will also benefit the taxpayer, when, for example, transfer pricing issues will be dealt with by both countries at the same time, which may reduce income allocation inconsistencies.¹³

10. Action 12: Require taxpayers to disclose their aggressive tax planning arrangements

¹¹ See Avi-Yonah and Pouga, Unitary Taxation and International Tax Rules, *ssrn*.

¹² OECD, Joint Audit Report, September 2010.

¹³ Glaxosmithkline.

Many countries have reporting requirements according to which a taxpayer has to disclose information about tax planning such a taxpayer was engage in. We believe that more countries should adopt such a disclosure regime not only to benefit the residence country in having more accessible information, but also to enable countries to exchange more valuable information. Therefore, we believe that in addition to amending domestic laws, Article 26 should also be changed to allow countries to exchange such information.

11. Action 13: Re-examine transfer pricing documentation

No treaty action required.

12. Action 14: Make dispute resolution mechanisms more effective

This action item requires more countries to adopt the new OECD mandatory arbitration procedures. No further revision of the model is required. However, the OECD may want to consider whether such an arbitration requirement may be hard to be adopted by EU countries. There is no doubt that the arbitration requirement will assist taxpayer in resolving tax disputes faster¹⁴ but such a provision takes power from the countries and delegate it to others. A power that, many will argue, already is limited or even hardly exist because of the subordination of te EU countries to the EU directives and the ECJ.

13. Action 15: develop a multilateral instrument

All of the above can, if possible, be included in a multilateral treaty as well as in bilateral ones.

¹⁴ Cite, OECD report on MAP and the average time to solve a dispute between countries.

[PROPOSED] OECD MODEL
INCOME TAX CONVENTION FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF DOUBLE NON-
TAXATION ON INCOME
2016
CONVENTION BETWEEN THE GOVERNMENT OF (State A)
AND THE GOVERNMENT OF (State B)
FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF DOUBLE NON-TAXATION
WITH RESPECT TO TAXES ON INCOME

The Government of ___ and the Government of ___ , desiring to conclude a Convention for the avoidance of double taxation and the prevention of double non-taxation with respect to taxes on income, have agreed as follows:

Article 1

GENERAL SCOPE

1. This Convention shall apply to persons who are residents of one or both of the Contracting States, except as otherwise provided in the Convention.
2. A person (other than an individual) which is a resident of a Contracting State shall be entitled under this Convention to relief from taxation in the other Contracting State only if:
 - (a) more than ____ percent of the beneficial interest in such person is ultimately owned, directly or indirectly, by one or more Qualified Individuals or a Company that has Substantial Trading in its stock on a Recognized Stock Exchange (“Traded Company”); and
 - (b) the income of such person is not used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are residents of a Contracting State other than a Contracting State .
3. Paragraph 1 shall not apply only if it is determined that the acquisition or maintenance of a Traded Company and the conduct of its operations did not have as a principal purpose obtaining benefits under the Convention.
4. Any relief from tax provided by a Contracting State to a resident of the other Contracting State under this Convention shall be applicable only to the extent that, under the law in force in that other Contracting State, the income to which the relief relates bears significantly the same tax as similar income arising within that other Contracting State derived by residents of that other Contracting State.
5. An item of income, profit or gain derived through an entity that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for purposes of the taxation law of such Contracting State as the income, profit or gain of a resident.

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political subdivisions or local authorities, 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 and to the extent that liability for that tax in a Contracting State is not dependent (by its terms or otherwise) on the availability of a credit for the tax against income tax liability in the other Contracting State.
3. The existing taxes to which this Convention shall apply are in particular:
 - a) in (State A) :
 - i)...
 - ii)...(hereinafter referred to as “_____ tax”);
 - b) in (State B) :
 - i)...
 - ii)...(hereinafter referred to as “_____ tax”);
4. This Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their respective taxation or other laws that significantly affect their obligations under this Convention.
5. This Convention shall not apply to taxes that are subject to refund or reduction, under the laws of a Contracting State at a date later than the tax year in which they are initially levied.

Article 3

GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
 - a) the term " _____ " means;
 - b) the term " _____ " means;
 - c) the terms "a Contracting State" and "the other Contracting State" mean _____ or _____, as the context requires;
 - d) the term "person" includes an individual, a company a trust, and any other body of persons;
 - e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes according to the laws of the state in which it is organized;
 - f) the term "enterprise" applies to the carrying on of any business;
 - g) 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; the terms also include an enterprise carried on by a resident of a Contracting State through an entity that is treated as fiscally transparent in that Contracting State;
 - h) the term "business" includes the performance of professional services and of other activities of an independent character;
 - i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that 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;
 - j) the term "competent authority" means:
 - i) in (State A) , _____ ; and
 - ii) in (State B) _____;
 - k) The term "remote sale" means a sale into a Contracting State, and the term "remote seller" means a person that makes remote sales in the Contracting State.

- l) The term “substantial trading” means the majority of the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company are primarily and regularly traded in a recognized stock exchange. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the “principal class of shares” are those classes that in the aggregate represent a majority of the aggregate voting power and value of the company.
- m) The "recognized stock exchange" means:
- i) stock exchange of _____]
 - ii) stock exchange of _____], and
 - iii) any other stock exchange agreed upon by the competent authorities.
- n) The term “qualified individual” means an individual that is a resident of either of the Contracting State or any other state agreed upon by the competent authorities.
- o) The term “a sale into a Contracting State” means a sale in which the location where the product or service sold is received by the purchaser, based on the location indicated by instructions for delivery that the purchaser furnishes to the seller, is within that Contracting State. When no delivery location is specified, the remote sale is sourced to the customer’s address that is either known to the seller or, if not known, obtained by the seller during the consummation of the transaction, including the address of the customer’s payment instrument if no other address is available. A sale into a Contracting State includes any property sold, exchanged or otherwise disposed of to any person if, when such property was sold, exchanged or otherwise disposed of to such person, it was reasonable for the seller to expect that such property would be sold in the Contracting State or such property would be used in the manufacture or production of, or as a component part in, other property which would be sold in the Contracting State. If property is ultimately sold in a Contracting State and all sales, exchanges or dispositions of such property before the sale in the Contracting State were between associated enterprises (as defined in Article 9), then there shall be deemed to have been a reasonable expectation that the property would be sold in the Contracting State.
- p) the term "national" of a Contracting State means:
- i) any individual possessing the nationality or citizenship of that Contracting State; and

ii) any legal person, partnership or association deriving its status as such from the laws in force in that Contracting State;

q) the term “pension fund” means any person established in a Contracting State that is:

i) generally exempt from income taxation in that Contracting State; and

ii) operated principally either:

A) to administer or provide pension or retirement benefits; or

B) to earn income for the benefit of one or more persons described in clause A).

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, or the competent authorities agree to a common meaning pursuant to the provisions of Article 25 (Mutual Agreement Procedure), have the meaning which it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, 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. This 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. I think this sentence is to prevent from a permanent establishment to be considered a resident; I suspect that a PE is not a resident because it is not a "person".

2. The term "resident of a Contracting State" includes:

- a) a pension fund established in that State; and
- b) an organization that is established and maintained in that State exclusively for religious, charitable, scientific, artistic, cultural, or educational purposes,

notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State. I assume this is here b/c of paragraph 8.7 of article 1 to the OECD commentary. I propose to delete it based on paragraph 8.6.

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

- 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 (center of vital interests);
- b) if the State in which he has his center of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he 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.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall determine the residency of such person taking into

consideration the place of effective management of such person. If the competent authorities do not reach such an agreement, that company will not be treated as a resident of either Contracting State for purposes of this Convention other than Articles 24 (Non-Discrimination), 25 (Mutual Agreement Procedure), 26 (Exchange of Information) and 27 (Assistant in Collection of Taxes) .

5. Where by reason of the provisions of paragraphs 1 and 2 of this Article a person other than an individual or a company is a resident of both Contracting States, the competent authorities of the Contracting States shall by mutual agreement endeavor to determine the mode of application of this Convention to that person.

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 mine, an oil or gas well, a quarry or any other place of extraction of natural resources, and
3. [alternative 1]Notwithstanding the preceding provisions, a remote seller constitutes a permanent establishment in a Contracting State if it has gross annual receipts in total remote sales in a Contracting States in the preceding calendar year exceeding \$1,000,000, whether such a remote seller satisfy any other definition in this Article 5 or not. [For alternative 2 see article 7].
4. A building site or construction or installation project, or an installation or drilling rig or ship used for the exploration of natural resources, constitutes a permanent establishment only if it lasts, or the exploration activity continues for more than twelve months.
5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
 - a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

- d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) through e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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

7. The fact that a company that is a resident of a Contracting State controls or is controlled by a company that 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, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

1. 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 [Alternative 2 for Remote Sales] [or unless the income is of a remote seller, in whatever capacity, which has gross annual receipts in total remote sales in the other Contracting States in the preceding calendar year exceeding \$1,000,000.] If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2,[or the profits of a remote seller,] may be taxed in the other Contracting State.
2. For the purposes of this Article and Article [23 A] [23B], the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.
3. Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment to the amount of the tax charged on those profits. In determining such adjustment, the competent authorities of the Contracting States shall if necessary consult each other.
4. 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.
5. In applying this Article, paragraph 6 of Article 10 (Dividends), paragraph 4 of Article 11(Interest), paragraph 3 of Article 12 (Royalties), paragraph 3 of Article 13 (Gains) and paragraph 2 of Article 21 (Other Income), any income or gain attributable to a permanent establishment during its existence is taxable in the Contracting State where such permanent establishment is situated even if the payments are deferred until such permanent establishment has ceased to exist.

Article 8

SHIPPING INLAND WATERWAYS TRANSPORT
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. Profits from the operation of boats engaged in inland waterways transport 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 or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbor of the ship or boat is situated, or, if there is no such home harbor, in the Contracting State of which the operator of the ship or boat is a resident.
3. The provisions of paragraphs 1 shall also apply to profits 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 a Contracting State and an enterprise of the other Contracting State,

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

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

Article 10

DIVIDENDS

1. Dividends paid by a company that is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - a) 5 percent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 percent of the capital of the company paying the dividends;
 - b) 15 percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. 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 that is subjected to the same taxation treatment as income from shares under the laws of the State of which the company making the distributions is a resident and shall include income that is dividend equivalent [871(m) definition].
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, nor 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 that other State.

A Contracting State may impose tax according to this Article on the undistributed profits of a corporation as if such profits were distributed but only to the extent the profits of the company are not business profits. Section B: Payments from real estate investment vehicles

6. This section applies to:
 - a) payments (“amounts”) made by a Real Estate Investment Trust (“company”) which is a resident of _____; and
 - b) payments (“amounts”) made by a Real Estate Investment Trust (“company”) which is a resident of _____;
7. Such amounts paid to a resident of a Contracting State may be taxed in that State.
8. However, subject to paragraph 10, such amounts may also be taxed in the Contracting State of which the company paying the amounts is a resident and according to the laws of that State, but if the beneficial owner of the amounts is a resident of the other Contracting State and holds less than 10 per cent of the capital of that company, the tax so charged shall not exceed 15 per cent of the amount.
9. Where the recipient of the amount is a pension scheme which is a resident of a Contracting State, that amount shall be exempt from tax in the other Contracting State.
10. Paragraphs 10 and 11 shall not affect the taxation of the company in respect of the profits out of which the amounts are paid.
11. The provisions of paragraphs 4 and 5 shall also apply to amounts falling within this section; the references to “dividends” shall be read as references to “amounts” and, in the case of paragraph 5, the reference to paragraphs 2 and 3 shall be read as a reference to paragraphs 8, 9, and 10.

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 ___ per cent of the gross amount of the interest. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this limitation.
3. Notwithstanding the preceding paragraphs, interest arising in a Contracting State and paid to a resident of the other Contracting State, and to the extent such residents are subject to the provisions of Article 9, such interest may be taxed in the Contracting State and according to the laws of that state.
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, including premiums or prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this 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 case the provisions of Article 7 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 such 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 payments shall remain taxable according to the laws of each State, due regard being had to the other provisions of this Convention.

6. Notwithstanding any of the preceding paragraphs, nothing in this Article prevent a Contracting State from applying its domestic laws with respect to the limitation on interest deduction between related persons.

Article 12

ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed only in that other State.
2. 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 cinematographic films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the 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.
3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. Gains derived by a resident of a Contracting State from the alienation of shares deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
5. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3 and 4, shall be taxable only in the Contracting State of which the alienator is a resident, if that resident was, immediately prior to such alienation, the beneficial owner of the alienated property.

[ARTICLE 14 - INDEPENDENT PERSONAL SERVICES]

[Deleted]

ARTICLE 15

INCOME FROM
EMPLOYMENT

1. Subject to the provisions of Articles 16, 18 and 19 , salaries, wages, and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
 - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned, 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 abroad a ship or aircraft operated in international traffic, or abroad a boat engaged in inland waterways transport, 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

ARTISTS AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7 and 15, 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 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 and 15, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

Article 18
PENSIONS

Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to an individual who is a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

Article 19

GOVERNMENT SERVICE

1. Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

2. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

3. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

4. The provisions of Articles 15, 16, 17, and 18 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Article 20

STUDENTS

Payments which a student or business apprentice 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 State, provided that such payments arise from sources outside that State.

Article 21

OTHER INCOME

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from real property as defined in paragraph 2 of Article 6 (Income from Real Property), if the beneficial owner of the income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein and the income is attributable to such permanent establishment. In such case the provisions of Article 7 (Business Profits) shall apply.
3. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

Article 22

GENERAL ANTI ABUSE RULE¹⁵

1. Unless otherwise specifically stated in this Agreement, this Agreement shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance where those provisions are used to challenge arrangements which constitute an abuse either of this Convention or the domestic law of a Contracting States.
2. If the foregoing provision results in double taxation, the Competent Authorities shall consult each other pursuant to paragraph XX of Article 25 on how to avoid double taxation.

ARTICLE 23 A EXEMPTION METHOD

3. Where a resident of a Contracting State derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the other Contracting State, the first-mentioned State shall, subject to the provisions of paragraphs 2 and 3, exempt such income from tax. However, this Article will not apply unless such liability for that tax in the other Contracting State is dependent (by its terms or otherwise) on the availability of a credit for the tax against income tax liability in the Contracting State.
4. Where a resident of a Contracting State derives items of income which, in accordance with the provisions of Articles 10 and 11, may be taxed in the other Contracting State, the first-mentioned State shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in that other State. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from that other State. Where in accordance with any provision of the Convention income derived or capital owned 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.
5. The provisions of paragraph 1 shall not apply to income derived or capital owned by a resident of a Contracting State where the other Contracting State applies the provisions of this Convention to exempt such income or capital from tax or applies the provisions of paragraph 2 of Article 10 or 11 to such income.
6. Each Contracting State exempt from tax charged by the other Contracting State tax according to the other Contracting State law on gains or income in relation to a deemed alienation or income recognition on emigration.

¹⁵ A comprehensive commentary to this article that distinguishes between the SAAR and GAAR and adopting GAAR as a better tool to avoid double non-taxation while protecting the treaty should be drafted.

ARTICLE 23 B
CREDIT METHOD

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:

a) as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other State;

b) as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in that other State.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital which may be taxed in that other State. Additionally, this Article will not apply unless such liability for that tax in the other Contracting State is dependent (by its terms or otherwise) on the availability of a credit for the tax against income tax liability in the Contracting State.

2. Where in accordance with any provision of the 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 or capital of such resident, take into account the exempted income or capital.

3. Each Contracting State will give credit for the other Contracting State tax charged according to the other Contracting State law on gains or income in relation to a deemed alienation or income recognition on emigration.

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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
2. Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances, in particular with respect to residence, are or may be subjected.
3. The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favorably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
4. Except where the provisions of paragraph 1 of Article 9, paragraph 6 of Article 11, or paragraph 4 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.
5. Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
6. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 25

MUTUAL AGREEMENT PROCEDURE

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the 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. 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 the Convention.

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

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

5. Where,

a. under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b. the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.

3. In no case shall the provisions of paragraphs 1 and 2 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*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 27

ASSISTANCE IN THE COLLECTION OF TAXES

1. The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Article 1. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.
2. The term “revenue claim” as used in this Article means any amount owed in respect of taxes covered by the Convention, together with interest, administrative penalties and costs of collection or conservancy related to such amount.
3. When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.
4. When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.
5. Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.
6. Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.
7. Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:
 - a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
 - b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8. In no case shall the provisions of this Article 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 carry out measures which would be contrary to public policy;
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State.

Article 28

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 29

ENTRY INTO FORCE

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at _____ as soon as possible.
2. The Convention shall enter into force upon the exchange of instruments of ratification and its provisions shall have effect:
 - a) (in State A):
 - b) (in State B):

Article 30

TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year _____. In such event, the Convention shall cease to have effect:

- a) (in State A): _____
- b) (in State B): _____