

GOVERNMENT NOTICE No. 16

TRINIDAD AND TOBAGO

THE INCOME TAX ORDINANCE, CH. 33. No. 1

ORDER

MADE BY THE GOVERNOR-GENERAL UNDER SECTION 47(1) OF THE INCOME TAX ORDINANCE, AS ENACTED BY SECTION 32 OF THE FINANCE ACT, 1966

THE DOUBLE TAXATION RELIEF (ASSOCIATED STATES)
ORDER, 1974

WHEREAS it is provided by subsection (1) of section 47 of the Income Tax Ordinance that if the Governor-General by Order published in the *Gazette* declares that arrangements specified in the Order have been made with the Government of any country with a view to affording relief from any 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:

And whereas by an Agreement done at Georgetown, Guyana between the Governments of Barbados, Guyana, Jamaica and Trinidad and Tobago ON THE ONE HAND AND Antigua, Belize, Dominica, Grenada, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent (in this Order referred to as "the Associated States") ON THE OTHER HAND, arrangements were made *inter alia* for the avoidance of double taxation:

Now, therefore, the Governor-General in pursuance of the said subsection (1) of section 47 of the Income Tax Ordinance is pleased to order, and it is hereby ordered as follows:—

1. This Order may be cited as the Double Taxation Relief (Associated States) Order, 1974.
2. It is hereby declared:—
 - (a) that the arrangements specified in the Schedule have been made with the Governments of the Associated States;
 - (b) that it is expedient that those arrangements should have effect.

SCHEDULE

AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND FOR THE ENCOURAGEMENT OF INTERNATIONAL TRADE AND INVESTMENT

Agreement between the Governments of Barbados, Guyana, Jamaica and Trinidad and Tobago ON THE ONE HAND and Antigua, Belize, Dominica, Grenada, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent ON THE OTHER HAND for the avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income and profits and for the encouragement of International Trade and Investment.

The Governments of the Contracting States desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and profits and the encouragement of International Trade and Investment,

Have agreed as follows:

ARTICLE 1

Scope of Agreement

This Agreement shall apply to any person who is a resident of any of the Contracting States.

ARTICLE 2

Taxes Covered

1. The taxes which are the subject of this Agreement are

- (a) (i) in Jamaica:
the income tax, the company profits tax, the additional company profits tax and the investment company profits tax.
- (ii) in Barbados:
the income tax, the petroleum winning operations tax and the trade tax.
- (iii) in Guyana:
the income tax and the corporation tax.
- (iv) in Trinidad and Tobago:
the corporation tax, the income tax and the unemployment levy.
- (b) in Antigua, Belize, Dominica, Grenada, Montserrat, St. Lucia, St. Vincent, St. Kitts, Nevis and Anguilla:
the income tax.

2. This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, those referred to in Paragraph 1 of this Article.

3. The competent authorities of the Contracting States shall notify each other of any change in the laws relating to the taxes which are the subject of this Agreement as soon as possible thereafter.

ARTICLE 3

Definitions

1. In this Agreement, unless the context otherwise requires:—

- “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- “competent authority” means the Minister of Finance or his authorised representative;
- “enterprise of a Schedule 1 State” and “enterprise of a Schedule 2 State” mean respectively an enterprise carried on by a resident of a Schedule 1 State and an enterprise carried on by a resident of a Schedule 2 State;
- “international traffic” includes traffic between places in one country in the course of a voyage which extends over one or more countries;
- “national” means:
 - (i) a citizen of a Contracting State; or
 - (ii) a person who has a connection with that State of a kind which entitles him to be regarded as belonging to, or, if it be so expressed, as being a native or resident of the State for the purposes of such laws thereof relating to immigration as are for the time being in force; or
 - (iii) a company or other legal person constituted in the Member State in conformity with the law thereof that such State regards as belonging to it, provided that such company or other legal person has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, in a Contracting State, and is substantially owned and effectively controlled by persons falling under (i) and (ii) above;

“person” includes, a company and any other body of persons corporate or not corporate;

“Schedule 1 State” means any one of the Contracting States referred to in Schedule 1 of this Agreement;

“Schedule 2 State” means any one of the Contracting States referred to in Schedule 2 of this Agreement.

2. Where in this Agreement reference is made to a Schedule 1 State in relation to a Schedule 2 State or vice-versa such a reference shall, unless the context otherwise requires, be read and construed as including a reference to a Schedule 2 State and a Schedule 1 State respectively for the purpose of the provision in which the reference is made.

3. In this Agreement a reference to any one of the Contracting States (whether as a Schedule 1 State or a Schedule 2 State or otherwise) shall be read and construed as a reference to the territory of such State and so as to include the territorial sea thereof, the sea-bed and sub-soil of the adjacent submarine areas beyond the territorial sea over which the Contracting State exercises sovereign rights, in accordance with its 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 Agreement is being applied is connected with such exploration or exploitation.

4. Where under this Agreement any income is exempt or relieved from tax in a Schedule 1 State and that income is subject to tax in a Schedule 2 State by reference to the amount thereof which is remitted to or received in the Schedule 2 State, the exemption or reduction of tax to be allowed under this Agreement in the Schedule 1 State shall apply only to the amount so remitted or received.

5. In the application of this Agreement by a Contracting State any term not defined in this Agreement 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 Agreement.

ARTICLE 4

Residence

1. For the purpose of this Agreement, the term “resident of a Schedule 1 State” or “resident of a Schedule 2 State” means any person who under the law of any one of those States respectively is liable to taxation therein by reason of his residence, place of effective management or any other criterion of a similar nature.

2. Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both a Schedule 1 State and a Schedule 2 State, then his status shall be determined in accordance with the following rules:—

- (a) he shall be deemed to be a resident of the Schedule 1 State or the Schedule 2 State in which he has a permanent home available to him. If he has a permanent home available to him in both such States, he shall be deemed to be a resident of the State with which his personal and economic relations are closest, (hereinafter referred to as his “centre of vital interests”);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either such 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 such 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 such States or of neither of them the competent authorities of both such States shall determine the question by mutual agreement.

3. Where by reason of the provisions of paragraph (1) of this Article a person other than an individual would be a resident of both a Schedule 1 State and a Schedule 2 State then it shall for the purposes of this Agreement be deemed to be a resident of the Schedule 2 State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Agreement, 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" shall include especially:—

- (a) a place of management;
- (b) a branch;
- (c) a store or other sales outlet;
- (d) an office;
- (e) a warehouse;
- (f) a factory;
- (g) a workshop;
- (h) a mine, quarry or other place of extraction of natural resources;
- (i) a building site or construction or assembly project.

3. 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 advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise;
- (e) an office or like establishment maintained by a news agency or a newspaper or journal exclusively for the collection and transmission of information on behalf of that enterprise.

4. An enterprise of a Schedule 1 State shall be deemed to have a permanent establishment in a Schedule 2 State if it carries on the activity of providing the services within the Schedule 2 State of public entertainers or athletes.

5. A person acting in a Schedule 1 State on behalf of an enterprise of a Schedule 2 State (other than an agent of an independent status to whom paragraph (1) applies), shall be deemed to be a permanent establishment in the Schedule 1 State:—

- (a) if he has, and habitually exercises in the Schedule 1 State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) if he maintains in the Schedule 1 State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders or makes deliveries on behalf of the enterprise;
- (c) if he maintains in the Schedule 1 State equipment or machinery for rental or other purposes within such State for a period, or periods exceeding in the aggregate six months.

6. An insurance enterprise of a Schedule 1 State shall, except in regard to re-insurance, be deemed to have a permanent establishment in a Schedule 2 State if it collects premiums in the Schedule 2 State or insures risks situated therein through an employee or an agent, but not including any such agent as is mentioned in paragraph 7.

7. An enterprise of a Schedule 1 State shall not be deemed to have a permanent establishment in a Schedule 2 State merely because it carries on business in the Schedule 2 State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business and their activities are not devoted wholly or almost wholly to the business of that enterprise.

8. The fact that a company which is a resident of a Schedule 1 State controls or is controlled by a company which is a resident of a Schedule 2 State, or which carries on business in a Schedule 2 State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

9. The fact that an enterprise of a Schedule 1 State maintains in a Schedule 2 State a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such place of business a permanent establishment of such enterprise.

ARTICLE 6

Income from Immovable Property

1. Subject to this Article any income from immovable property may be taxed in the Contracting State in which such property is situated, according to the laws of that State.

2. The term "immovable property" shall be defined in accordance with 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 or forestry enterprises, 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 of this Article, shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner of the income, being a resident of a Schedule 1 State has in a Schedule 2 State in which the income arises, a permanent establishment and the right or property giving rise to the income is effectively connected with a business carried on through that permanent establishment. In such a case the provisions of Article 7 of this Agreement shall apply.

ARTICLE 7

Business Profits

1. The industrial or commercial profits of an enterprise of a Schedule 1 State shall not be subject to tax in a Schedule 2 State unless the enterprise carried on a trade or business in the Schedule 2 State through a permanent establishment situated therein. If it carries on a trade or business as aforesaid tax may be imposed on those profits by the Schedule 2 State but only on so much of them as is attributable to that permanent establishment.

2. Notwithstanding the provisions of paragraph 1 where an enterprise of a Schedule 1 State which has a permanent establishment in a Schedule 2 State carries on business activities in the Schedule 2 State otherwise than through the permanent establishment such business activities being of the same or similar kind as the business activities carried on through the permanent establishment then the profits of such activities shall, nevertheless, be attributed to the permanent establishment in that Schedule 2 State and taxed accordingly.

3. Where an enterprise of a Schedule 1 State is engaged in trade or business in a Schedule 2 State through a permanent establishment situated therein there shall be attributed to such permanent establishment the industrial or commercial profits which would be attributable to such permanent establishment if such permanent establishment were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. In determining the industrial or commercial profit of a permanent establishment situated in a Contracting State there shall be allowed as deductions all expenses which would be deductible to the extent indicated under the law of that State if the permanent establishment were an independent enterprise insofar as such expenses are allocable to the permanent establishment including executive and general administrative expenses so allocable and deductible, whether incurred in the State in which the permanent establishment is situated or elsewhere.

5. No profits shall be attributed to a permanent establishment of an enterprise of a Schedule 1 State in a Schedule 2 State merely by reason of the purchase of goods or merchandise by that permanent establishment or by the enterprise of which it is a permanent establishment, for the account of that enterprise.

6. Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 3 of this Article shall preclude that State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall however be such that the result shall be in accordance with the principles laid down in this Article.

7. For the purposes 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.

8. In this Article the term "industrial or commercial profits" does not include dividends, interest, royalties, income from immovable property, management charges or rental of equipment other than dividends, interest, royalties, income from immovable property, management charges or rental of equipment effectively connected with a trade or business carried on through a permanent establishment which an enterprise of a Schedule 1 State has in a Schedule 2 State; and also does not include income derived from independent, personal, professional or technical services or remuneration for personal (including professional) services.

9. Where industrial or commercial profits include items of income which are dealt with separately in other Articles of this Agreement, the provisions of those Articles shall, except as otherwise provided therein, supersede the provisions of this Article.

ARTICLE 8

Shipping and Air Transport

1. Profits derived from the operation of ships or aircraft in international traffic by a resident of a Schedule 1 State or a Schedule 2 State shall be taxable only in that Schedule 1 State or in that Schedule 2 State as the case may be.

2. The provisions of paragraph 1 of this Article shall likewise apply in respect of profits derived from participation in pools by enterprises of Schedule 1 States and Schedule 2 States engaged in air or shipping transport.

ARTICLE 9

Related or Connected Persons

1. Where a resident of a Schedule 1 State or of a Schedule 2 State and any other person are related or connected and where such persons make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, then any income which would, but for those arrangements or conditions, have accrued to such resident but, by reason of those arrangements or conditions, has not so accrued, may be included in the income of such resident and taxed by that Schedule 1 State or by that Schedule 2 State as the case may be accordingly.

2. A person shall be deemed to be related or connected to another person if either person owns or controls the other; or if any third person owns or controls both, or where one person participates in the management of the other, or where any third person participates in the management of both, whether such ownership, control or participation in management is direct or indirect. For this purpose, the term "control" includes any kind of control whether or not legally enforceable and however exercised or exercisable.

ARTICLE 10

Dividends

1. Dividends beneficially owned by a resident of a Schedule 1 State and derived from a company which is a resident of a Schedule 2 State may be taxed in the Schedule 1 State.

2. However, such dividends may be taxed in the State of which the Company paying the dividends is a resident and according to the law of that State, but the tax so charged shall not exceed:

(a) In Barbados—

The rate of tax chargeable in respect of the profits or income of the company paying the dividend;

(b) In Guyana—

25 per cent of the gross dividend;

(c) In Jamaica—

(i) 22½ per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power of the company paying the dividends;

(ii) 15 per cent of the gross amount of the dividends in all other cases;

(d) In Trinidad and Tobago—

(i) nil, where the beneficial owner of the dividend is a company which controls directly or indirectly at least 10 per cent of the voting power of the company paying the dividend, or on remittances or deemed remittances of a permanent establishment;

(ii) 10 per cent of the gross dividend, in all other cases;

(e) In the Schedule 2 States—

The rate of tax chargeable in respect of the profits or income of the company paying the dividend.

3. The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the dividends, being a resident of a Schedule 1 State, has in a Schedule 2 State, of which the company paying the dividends is a resident, a permanent establishment with which the holding by virtue of which the dividends are paid, is effectively connected. In such a case, the provisions of Article 7 of this Agreement shall apply.

4. The term "dividend" includes any distribution which under the law of a Contracting State is treated as a dividend or other distribution.

ARTICLE 11

Interest

1. Interest arising in a Schedule 1 State that accrues to and is beneficially owned by a resident of a Schedule 2 State may be taxed in the Schedule 2 State.

2. However, such interest may be taxed in the State in which it arises, and according to the law of that State, but, if that State is a Schedule 1 State, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the interest being a resident of a Schedule 2 State has in a Schedule 1 State in which the interest arises a permanent establishment with which the indebtedness from which the interest arises is effectively connected. In such a case, the provisions of Article 7 of this Agreement shall apply.

4. Notwithstanding the provisions of paragraph 1 and 2 of this Article, interest derived from sources within a Schedule 1 State shall be exempt from tax in that State if it is beneficially owned by the Government of a Schedule 2 State, or by an instrumentality of a Schedule 2 State not subject to tax in that Schedule 2 State on its income.

5. The term "instrumentality" as used in this Article means any agency or entity created or organised by either a Schedule 1 State or a Schedule 2 State in order to carry out governmental functions.

6. Interest shall be deemed to arise in a State where the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the interest whether he is a resident of a Schedule 1 State or a Schedule 2 State or not, has in a 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, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid having regard to the indebtedness on 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 that case, the excess part of the payments shall remain taxable according to the laws of the Schedule 1 State or Schedule 2 State, as the case may be, due regard being had to the other provisions of this Agreement.

8. The term "interest" shall not include any item of income which is treated as a dividend or other distribution by the tax laws of the Schedule 1 State or the Schedule 2 State, as the case may be.

ARTICLE 12

Royalties

1. Royalties arising in a Schedule 1 State that accrue to and are beneficially owned by a resident of a Schedule 2 State may be taxed in that Schedule 2 State.

2. However, such royalties may be taxed in the State in which they arise and according to the law of that State, but if that State is a Schedule 1 State the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.

3. 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 copyright of literary, artistic or scientific work, including cinematograph films and films or tapes for radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process or other like property or rights, or for the right to use industrial, commercial or scientific equipment, or for the use of or the right to use industrial, commercial or scientific information, or experience, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or in respect of the extraction or removal of natural resources.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner of the royalties has in the State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalty is effectively connected. In such a case, the provisions of Article 7 of this Agreement shall apply.

5. Royalties shall be deemed to arise in a State where the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Schedule 1 State or a Schedule 2 State or not, has in a State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by the permanent establishment then such royalties shall be deemed to arise in the State in which such permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties 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 that case the excess part of the payment shall remain taxable according to the laws of the Schedule 1 State or the Schedule 2 State as the case may be, due regard being had to the other provisions of this Agreement.

ARTICLE 13

Management Charges

1. Management Charges arising in a Schedule 1 State and paid to a resident of a Schedule 2 State may be taxed in the Schedule 2 State.

2. However, such management charges may be taxed in the State in which they arise and according to the law of that State, but if that State is a Schedule 1 State the tax so charged shall not exceed 10 percent of the gross amount of such management charges.

3. The term "Management Charges" as used in this Article means payment for the provision of industrial or commercial advice or for management, or technical services or similar services or facilities.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient has in the State in which the payment arises a permanent establishment with which such payment is effectively connected. In such a case, the provisions of Article 7 of this Agreement shall apply.

5. Where owing to a special relationship between the person by whom such management charges are paid and the recipient, or between both of them and some other person, the amount of the payment made 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 that case the excess part of the payment shall remain taxable according to the laws of the Schedule 1 State or Schedule 2 State, as the case may be, due regard being had to the provisions of this Agreement.

ARTICLE 14

Rental of Equipment

1. Rent arising in a Schedule 1 State from the hire of equipment that accrues to and is beneficially owned by a resident of a Schedule 2 State may be taxed in the Schedule 2 State.

2. However, such rent may be taxed in the State in which it arises and according to the law of that State, but if that State is a Schedule 1 State, the tax so charged shall not exceed 5 percent of the gross amount of the rent.

3. The term "rent" as used in this Article means payments of any kind received as consideration for the hire of plant, machinery or equipment of any kind or description. It does not, however, include payments made under *bona fide* hire purchase agreements.

4. The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the rent has in the State in which the rent arises a permanent establishment with which the equipment giving rise to the rent is effectively connected. In such a case, the provisions of Article 7 of this Agreement shall apply.

5. Rent shall be deemed to arise in a State where the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the rent, whether or not he is a resident of a Schedule 1 State or a Schedule 2 State has in a State a permanent establishment in connection with which the obligation to pay the rent was incurred, and such rent is borne by such permanent establishment, then such rent shall be deemed to arise in the State in which such permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the beneficial owner, or between both of them and some other person, the amount of the rent 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 that case the excess part of the payment shall remain taxable according to the laws of the Schedule 1 State or Schedule 2 State, as the case may be, due regard being had to the other provisions of this Agreement.

ARTICLE 15

Independent Personal Services

1. Where a resident of a Schedule 1 State derives income from a Schedule 2 State in respect of independent personal services he shall be subject to tax in the Schedule 2 State in respect of such income as is attributable to the services performed in that State.

2. The term "independent personal services" includes independent scientific, literary, artistic, educational and teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists, accountants, public entertainers and athletes.

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17, 18 and 19 of this Agreement, salaries, wages and other similar remuneration derived by a resident of a Schedule 1 State in respect of an employment shall be subject to tax only in the Schedule 1 State unless the employment is exercised in a Schedule 2 State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that Schedule 2 State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration derived by a resident of a Schedule 1 State in respect of an employment exercised in a Schedule 2 State shall be subjected to tax only in the Schedule 1 State if:—

- (a) the recipient is present in the Schedule 2 State for a period or periods not exceeding in the aggregate 183 days in the tax year; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of the Schedule 2 State; and
- (c) the remuneration is not deducted from the profits of a permanent establishment which the employer has in the Schedule 2 State.

3. In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment, and as if references to employers were references to the company. Income from personal services performed by a partner in a partnership shall be treated as income from independent services under Article 15 of this Agreement.

4. Notwithstanding the preceding provisions of this Article, remuneration in respect of employment performed aboard a ship or aircraft in international traffic may be taxed in the State in which the person operating the ship or aircraft is a resident.

ARTICLE 17

Private Pension and Annuities

1. Private pensions, life annuities and alimony paid by a resident of a Schedule 1 State to an individual who is a resident of a Schedule 2 State may be taxed in the Schedule 1 State according to the law of that State. However, such private pensions, life annuities and alimony may also be taxed in the Schedule 2 State.

2. The term "life annuities" as used in this Article means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make payments in return for adequate and full consideration in money or money's worth.

3. The term "pensions" as used in this Article means periodic payments made after retirement or death in consideration for services rendered, or by way of compensation for injuries received in connection with past employment.

4. The term "alimony" as used in this Article means periodic payments made pursuant to a decree of divorce or of separate maintenance or of separation or in accordance with the terms of a deed of separation which are taxable on the recipient under the internal laws of the State of which he is a resident.

ARTICLE 18

Governmental Functions

1. Remuneration, other than pensions, paid by a Schedule 1 State or a local authority thereof to any individual in respect of services rendered to it in the discharge of governmental functions shall be taxed only in that Schedule 1 State, if the individual is not ordinarily resident in a Schedule 2 State or is ordinarily resident in the Schedule 2 State solely for the purpose of rendering those services.
2. Pensions paid by a State to any individual in respect of services rendered to that State in the discharge of Governmental functions may be taxed in that State. However, such pensions may also be taxed in the State in which the beneficial owner is resident.
3. The provisions of paragraph 1 of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either a Schedule 1 State or a Schedule 2 State or a local authority thereof for purposes of profit.
4. Any pension paid under any social security or national insurance scheme established under the laws of a Schedule 1 State shall be exempt from tax in a Schedule 2 State if such pension is exempt from tax in the Schedule 1 State.

ARTICLE 19

Students and Trainees

1. (a) An individual who is a resident of a Schedule 1 State immediately before his visit to the Schedule 2 State and who is temporarily present in that Schedule 2 State for the primary purpose of—
 - (i) studying in that Schedule 2 State at a university or other educational institution approved by the appropriate educational authority of that State;
 - (ii) securing training required to qualify him to practice a profession or a professional speciality; or
 - (iii) 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 sponsored programmes;
 shall be exempt from tax by that Schedule 2 State with respect to:—
 - (A) gifts from abroad for the purposes of his maintenance, education, study, research or training;
 - (B) the grant, allowance or award; and
 - (C) remuneration from employment in that Schedule 2 State provided that the remuneration constitutes earnings reasonably necessary for his maintenance and education.
- (b) The benefits under this paragraph shall only extend for such period of time as may be reasonably or customarily required to effectuate the purpose of the visit.
2. A resident of a Schedule 1 State who is present in a Schedule 2 State for a period not exceeding one year, as an employee of, or under contract with a resident of a Schedule 1 State, for the primary purpose of acquiring technical, professional or business experience from a person resident in a Schedule 2 State shall be exempt from tax for that period in the Schedule 2 State with respect to so much of his remuneration from employment in the Schedule 2 State as does not exceed an aggregate amount of Jamaica \$4,000 or the equivalent.
3. A resident of a Schedule 1 State who is present in a Schedule 2 State for a period not exceeding one year, as a participant in a programme sponsored by the Government of the Schedule 2 State for the primary purpose of training, research or study, shall be exempt from tax for that period in that Schedule 2 State with respect to any grant, allowance, award, or remuneration.

ARTICLE 20

Credit

1. Subject to the provisions of the law of a Schedule 1 State regarding the allowance as a credit against tax assessable in that State of tax payable in a Schedule 2 State (which shall not affect the general principle hereof)—

- (a) tax payable under the laws of a Schedule 2 State and in accordance with the present Agreement, whether directly or by deduction, on profits, or income from sources within that Schedule 2 State (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any tax in the Schedule 1 State computed by reference to the same profits, or income by reference to which the tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of a Schedule 2 State to a company which is a resident of a Schedule 1 State and which controls directly or indirectly at least 10 per cent of the voting power in the company, the credit shall take into account, in addition to any tax which may be allowed under sub-paragraph (a) above, the tax payable by the company in the Schedule 2 State in respect of the profits out of which such dividend is paid.

The credit, however, shall in no case exceed that part of the tax computed before the credit is given in a Schedule 1 State, which is appropriate to the income which may be taxed in a Schedule 2 State.

2. For the purposes of this Article profits or remuneration for personal (including professional) services performed in a Schedule 1 State or a Schedule 2 State shall be deemed to be income from sources within the Schedule 1 State or the Schedule 2 State as the case may be, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated in international traffic by a resident of one of the Schedule 1 States or one of the Schedule 2 States shall be deemed to be performed in that Schedule 1 State or that Schedule 2 State as the case may be.

3. For the purposes of this Article, taxes paid or payable shall be deemed to include any amount which would have been payable for any year but for an exemption or reduction of tax granted for that year or any part thereof under the laws specified in Schedule 3 to this Agreement.

ARTICLE 21

Exemption from Tax

Where a company which is a resident of a Schedule 1 State pays a dividend or other distribution to a resident of a Schedule 2 State out of profits or gains exempt from tax under the laws of the Schedule 1 State made pursuant to the Agreement establishing the Scheme for the Harmonisation of Fiscal Incentives to Industry such dividends or other distributions shall be exempt from tax in the Schedule 2 State.

ARTICLE 22

Application of Rates

1. Where a rate of tax is required by this Agreement to be lower than that which would otherwise be imposed by a Schedule 1 State or a Schedule 2 State in cases where the provisions of paragraph 4 of Article 23 of this Agreement apply, on income or profits arising or accruing therein, the lower rate shall not apply and the statutory rate shall be taken to be the rate applicable, unless the enterprises seeking the application of the lower proves to the satisfaction of the competent authority of the Schedule 1 State—

- (a) that it is substantially owned and controlled by persons resident (and in the case of individuals, ordinary resident) in a Schedule 1 State or a Schedule 2 State or both;
- (b) that the acquisition of such ownership and control did not have as its object or one of its objects the securing of the lower rate of tax.

2. For the purpose of this Article, a company shall be regarded as being substantially owned and controlled by persons resident in a Schedule 1 State or Schedule 2 State or both, if at least 51 per cent of the ordinary share capital of the company is beneficially owned by—

- (a) individuals who are ordinarily resident in a Schedule 1 State or Schedule 2 State or both, or
- (b) one or more companies at least 51 per cent of whose share capital is owned by such individuals.

ARTICLE 23

Non-discrimination

1. The nationals of a Schedule 1 State shall not be subjected in a Schedule 2 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which the nationals of that Schedule 2 State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of a Schedule 1 State has in a Schedule 2 State shall not be less favourably levied in that Schedule 2 State than the taxation levied on enterprises of that Schedule 2 State carrying on the same activities.

3. The provisions of this Article shall not be construed as obliging a Schedule 1 State to grant to residents of a Schedule 2 State those personal allowances and reliefs for tax purposes which are by law available only to residents of a Schedule 1 State.

4. The provisions of Articles 11, 12, 13 and 14 of this Agreement whereby the rates at which a Schedule 2 State may impose taxes on income arising in that State in accordance with the laws of that State are prescribed, shall cease to apply to any interest, royalties, management charges and rental of equipment arising in any such State which concludes an agreement with any country, other than a Contracting State, at a rate of tax lower than the rate imposed under the laws of that Schedule 2 State on income of that description.

5. In such a case as is mentioned in paragraph 4 of this Article, the rate of tax applicable under the laws of that Schedule 2 State to income of that description accruing to a resident of a Schedule 1 State shall be taken to be the same as that prescribed for Schedule 1 States by those Articles of this Agreement, until such time as the rates of tax prescribed by those Articles are re-negotiated.

ARTICLE 24

Consultation

1. Where a resident of a Schedule 1 State considers that the actions of that Schedule 1 State or any Schedule 2 State or both result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the laws of those States, present his case to the competent authority of the State of which he is a resident.

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 an appropriate solution, to resolve that case by mutual agreement with the competent authority of the Schedule 2 State, with a view to the avoidance of taxation not in accordance with this Agreement.

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 Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting States may communicate directly with each other for the purposes of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

Exchange of Information

The competent authorities of the Contracting States shall, upon request, exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to persons other than persons (including a court or administrative tribunal) concerned with the assessment, collection, enforcement or prosecution in respect of the taxes which are the subject of this Agreement. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

ARTICLE 26

Effective date of Commencement

This Agreement shall come into force on the date when the last of all such things shall have been done in the Schedule 1 States and in any six of the Schedule 2 States as are necessary to give the agreement the force of law in the Schedule 1 States and the Schedule 2 States and shall thereupon have effect:

(a) in Barbados:

- (i) as regards income tax for any year of assessment beginning after the year of assessment 1973;
- (ii) as regards petroleum winnings tax, for any accounting period beginning after the accounting period for the year of assessment 1973;
- (iii) as regards trade tax for any taxing period beginning after the taxing period ending on the 31st March, 1973.

(b) in Guyana:

- (i) as regards income tax;
- (ii) as regards corporation tax; for any year of assessment beginning after the year of assessment 1973.

(c) in Jamaica:

- (i) as regards income tax; and
 - (ii) as regards company profits tax; and the additional company profits tax;
- for any year beginning on or after 1st January, 1973.

(d) in Trinidad and Tobago:

- (i) as regards income tax;
 - (ii) as regards corporation tax;
 - (iii) as regards unemployment levy;
- for any year of income beginning after the year of income 1972.

(e) In the Schedule 2 States:

- (i) as regards income tax; for any year of assessment beginning after the year of assessment 1973.

ARTICLE 27

Termination

After the year of income 1974 or the year of assessment 1975, as the case may be, the Government of any Schedule 1 State or the Government of any Schedule 2 State may, upon giving six months notice in writing of its intention so to do to the Governments of the other Contracting States, withdraw from the Agreement; and in such event this Agreement shall cease to be effective in respect of the State giving said notice for any year of income or year of assessment, as the case may be, commencing after the expiration of the notice.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being duly authorised thereto by their respective Governments, have signed the present agreement.

Done at Georgetown, Guyana on the 1st day of June, 1973, in a single copy, certified copies of which shall be transmitted to all Participating Governments.

SIGNED BY:

for the Government of Antigua
on
at

GEORGE C. R. MOE

for the Government of Barbados
on 13th June, 1973
at Bridgetown, Barbados

GEORGE PRICE

for the Government of Belize
on August 28, 1973
at Chaguaramas, Trinidad and Tobago

RONALD O. P. ARMOUR

for the Government of Dominica
on 5th July, 1973
at Port-of-Spain, Trinidad and Tobago

DEREK KNIGHT

for the Government of Grenada
on 5th July, 1973
at Port-of-Spain, Trinidad and Tobago

F. E. HOPE

for the Government of Guyana
on 5th June, 1973
at Georgetown, Guyana

PERCIVAL J. PATTERSON

for the Government of Jamaica
on 5th July, 1973
at Port-of-Spain, Trinidad and Tobago

for the Government of Montserrat
on
at

C. PAUL SOUTHWELL

for the Government of St. Kitts-Nevis-Anguilla
on 6th July, 1973
at Port-of-Spain, Trinidad and Tobago

JOHN COMPTON

for the Government of St. Lucia
on 15th June, 1973
at Castries, St. Lucia

J. F. MITCHELL

for the Government of St. Vincent
on 4th July, 1973
at Port-of-Spain, Trinidad and Tobago

GEORGE M. CHAMBERS

for the Government of Trinidad and Tobago
on 5th June, 1973
at Port-of-Spain, Trinidad and Tobago

SCHEDULE 1

SCHEDULE 1 STATES

BARBADOS
 GUYANA
 JAMAICA
 TRINIDAD AND TOBAGO

SCHEDULE 2

SCHEDULE 2 STATES

ANTIGUA	ST. LUCIA
BELIZE	ST. VINCENT
DOMINICA	ST. KITTS, NEVIS
GRENADA	AND ANGUILLA
MONTserrat	

SCHEDULE 3

List of Laws of Contracting States providing for exemption or reduction of tax

ANTIGUA:

- (1) Aid to Pioneer Industries, Chapter 354.
- (2) Hotel Aids Ordinance, Chapter 364.
- (3) Income Tax Ordinance, Chapter 266.

BARBADOS:

- (1) The Pioneer Industries Act, 1958—54, as amended.
- (2) The Industrial Development (Export Industries) Act, 1969—43.
- (3) The Industrial Incentives Act, 1963—31.
- (4) The Industrial Incentives (Factory Construction) Act, 1965—29.
- (5) The Hotel Aids Act, 1967—25.
- (6) The Income Tax Act, 1968—51.

BELIZE:

- (1) Income Tax Ordinance, Chapter 38 (as amended).
- (2) Development Incentives Ordinance, 1960, No. 4.

DOMINICA:

- (1) Pioneer Industries, Chapter 314.
- (2) Hotel Aids Ordinance, Chapter 321:—
 Act No. 28 of 1966
 Act No. 17 of 1968
 Act No. 32 of 1968
 Act No. 1 of 1971.

GRENADA:

Act No. 20 of 1964.

GUYANA:

- (1) Income Tax (In Aid of Industry) Ordinance, Chapter 300.
- (2) Co-operative Societies, Chapter 326.

JAMAICA:

- (1) Section 28B of the Income Tax Law, 1954.
- (2) Section 10, subsection 4 of the Motion Picture Industry (Encouragement) Law (as amended).
- (3) Section 8, subsection 5 of the Pioneer Industries (Encouragement) Law (as amended).
- (4) Section 6, subsection 3 of the St. Andrew Mines (Encouragement) Law.
- (5) Section 8, subsection 5 of Textile Industry (Encouragement) Law (as amended).
- (6) Part II and VI of the Industrial Incentive Law 1956 (as amended).
- (7) Section 10 of the Export Industry Encouragement Law, 1956.
- (8) Section 11 of the Export Industry Encouragement Law 1956, as amended by the Export Industry Encouragement (Amendment) Act, 1968.
- (9) Section 10, paragraph (1)(e) of the Petroleum Refining Industry (Encouragement) Law, 1961.
- (10) Section 3 of the Income Tax (Amendment) (No. 3) Act, 1965.
- (11) Sections 9 and 10 of the Hotel (Incentives) Act, 1968.
- (12) Sections 7 and 8 of the Resort Cottages (Incentives) Act, 1971.
- (13) Sections 2 and 3 of the Income Tax (Amendment) (No. 1) Act, 1972.
- (14) Sections 7 and 8 of the Agricultural Incentives Act, 1972.

MONTserrat:

- (1) Income Tax Ordinance, No. 19 of 1967.
- (2) Aid to Pioneer Industries Ordinance, Chapter 304.

ST. KITTS-NEVIS-ANGUILLA:

Income Tax Ordinance, No. 17 of 1966.

St. LUCIA:

Income Tax Act, No. 39 of 1965.

ST. VINCENT:

- (1) Aid to Pioneer Industries.
- (2) Hotel Aids Ordinance.

TRINIDAD AND TOBAGO:

- (1) Aid to Pioneer Industries Ordinance, Chapter 33. No. 3.
- (2) Cement Industry (Development) Ordinance, Ch. 33. No. 17.
- (3) Nitrogenous Fertilizer Industry (Development) Ordinance, 1958.
- (4) Lubricating Oils and Greases Industry Development Ordinance, 1961.
- (5) Housing Act, 1962.
- (6) Petrochemicals Industry Development Act, 1962.
- (7) Hotel Development Act, 1962.
- (8) Tyre Manufacturing Industry Development Act, 1967.
- (9) Finance Act, 1966, Part II.

Dated this 8th day of January, 1974.

D. H. N. ALLEYNE
Secretary to Cabinet