

GOVERNMENT NOTICE No. 94

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 (SWITZERLAND) ORDER, 1973

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 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 a Convention dated 1st February, 1973, made between the Government of Trinidad and Tobago and the Government of Switzerland, 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 (Switzerland) Order, 1973.
2. It is hereby declared—
 - (a) that the arrangements specified in the Schedule have been made with the Swiss Federal Council;
 - (b) that it is expedient that those arrangements should have effect.

SCHEDULE

CONVENTION BETWEEN TRINIDAD AND TOBAGO AND SWITZERLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO
TAXES ON INCOME

The Government of Trinidad and Tobago and the Swiss Federal Council desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income have agreed as follows:

ARTICLE 1

Personal Scope

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

SCHEDULE—Continued

ARTICLE 2

Taxes Covered

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

- (a) in Trinidad and Tobago:
the corporation tax, the income tax and the unemployment levy (hereinafter referred to as "Trinidad and Tobago tax");
- (b) in Switzerland:
the Federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits and other items of income) (hereinafter referred to as "Swiss tax").

2. This Convention 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 the preceding paragraph. The competent authorities of the Contracting States shall notify to each other any changes which have been made in their respective taxation laws within a reasonable period of time after such changes.

ARTICLE 3

Definitions

1. In this Convention, unless the context otherwise requires:

- (a) (i) the term "Trinidad and Tobago" means the islands of Trinidad and Tobago; and
- (ii) when used in a geographical sense, the term "Trinidad and Tobago" includes:
 - (A) the territorial sea thereof; and
 - (B) the sea bed and sub-soil of the adjacent submarine areas beyond the territorial sea over which Trinidad and Tobago exercises sovereign rights, in accordance with Trinidad and Tobago legislation and international law concerning the continental shelf, for the purpose of exploration and exploitation of the natural resources of such areas, but only to the extent that the person, property or activity to which this Convention is being applied is connected with such exploration or exploitation;
- (b) the term "Switzerland" means the Swiss Confederation;
- (c) the terms "a Contracting State," "one of the Contracting States" and "the other Contracting State" mean Trinidad and Tobago or Switzerland, as the context requires;
- (d) the term "person" comprises an individual, a company and any other body of persons;
- (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" means respectively an enterprise carried on by a resident of one of the Contracting States and an enterprise carried on by a resident of the other Contracting State;
- (g) the term "national" means any individual possessing the nationality of a Contracting State and any legal person, partnership or association deriving its status as such from the law in force in a Contracting State;
- (h) the term "international traffic" means traffic between places in one country in the course of a voyage which extends over more than one country;

SCHEDULE—Continued

- (i) the term "competent authority" means:
- (i) in the case of Trinidad and Tobago, the Minister of Finance or his authorised representative;
 - (ii) in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative.

2. Where under any provision of the Convention, income from a source within Switzerland is relieved from Swiss tax and, under the law in force in Trinidad and Tobago an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to, or received in, Trinidad and Tobago and not by reference to the full amount thereof, then the relief to be allowed under the Convention in Switzerland shall apply only to so much of the income as is remitted to, or received in, Trinidad and Tobago.

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

ARTICLE 4

Fiscal Domicile

1. For the purposes of this Convention, the term "resident of one of the Contracting States" means any person, who, under the law of that State, is liable to taxation therein by reason of his domicile, resident, place of 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 Contracting States, then his status shall be determined in accordance with the following rules:

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as "his centre of vital interests");
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting 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 is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State, in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially—

- (a) a place of management;
- (b) a branch;

SCHEDULE—Continued

- (c) premises used as a sales outlet;
 - (d) an office;
 - (e) a warehouse, in relation to a person providing storage facilities for others;
 - (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 which exists for more than six months.
3. The term "permanent establishment" shall not be deemed 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 for collecting information, for the enterprise;
 - (e) 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.
4. A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State (other than an agent of an independent status to whom paragraph 5 applies) shall be deemed to be a permanent establishment in the first-mentioned Contracting State:
- (a) if he has, and habitually exercises in that first-mentioned Contracting 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; or
 - (b) if he maintains in that first-mentioned Contracting 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.
5. An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carried on business in that other Contracting 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 except the activities of such agent are devoted wholly or almost wholly on behalf of the enterprise of the other Contracting State.
6. The fact that a company which is a resident of one of the Contracting States controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other Contracting 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 from immovable property may be taxed in the Contracting State in which such property is situated.
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 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 natural resources; ships, boats and aircrafts shall not be regarded as immovable property.

SCHEDULE—Continued

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 paragraphs 1 and 3 of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE 7

Business Profits

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

2. Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions all expenses of the enterprise (including executive and general administrative expenses) which would be deductible if the permanent establishment were an independent enterprise and which are reasonably allocable to the permanent establishment, whether such expenses were incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. 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 2 of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles laid down in this Article.

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

6. 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.

7. The term "profit" does not include dividends, interest, royalties or rents other than dividends, interest, royalties or rents effectively connected with a trade or business carried on through a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State; nor does the term include income derived by an enterprise from the provision of management and other personal, professional and technical services or remuneration for personal (including professional) services.

ARTICLE 8

Shipping and Air Transport

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

2. The exemption provided in paragraph 1 of this Article shall apply to a share of the profits from the operation of ships or aircrafts in international traffic derived by an enterprise of one of the Contracting States through participation in a pooled service, in a joint air transport operation or in an international operating agency.

SCHEDULE—Continued

ARTICLE 9

Associated Enterprise

Where—

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

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

ARTICLE 10

Dividends

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

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

- (a) ten per cent of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least ten per cent of the voting power of the company paying the dividends;
- (b) in all other cases, twenty per cent of the gross amount of the dividends.

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":

- (a) in the case of Trinidad and Tobago means any item of income which under the law of Trinidad and Tobago is treated as a distribution;
- (b) in the case of Switzerland means income from shares and income from other corporate rights assimilated to income from shares by the law of Switzerland.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has in the other Contracting 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 shall apply.

5. Where a company which is a resident of one of the Contracting States derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company to persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Contracting State.

6. Where a company which is a resident of Switzerland, having a permanent establishment in Trinidad and Tobago, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits by the permanent establishment to a resident of Switzerland may be taxed in accordance with the law of Trinidad and Tobago, but the rate of tax imposed on such remittances shall not exceed ten per cent.

SCHEDULE—Continued

ARTICLE 11

Interest

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

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

3. The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the Contracting States in which the income arises. The term, however, does not include any income which is treated as a dividend within the meaning of paragraph 3 of Article 10.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient of the interest, being a resident of one of the Contracting States, has in the other Contracting State in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 shall apply.

5. Interest shall be deemed to arise in one of the Contracting States when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that Contracting State. Where, however, the person paying the interest, whether he is a resident of one of the Contracting States 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 Contracting State in which the permanent establishment is situated.

6. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, 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 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 payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

7. Any provision of Trinidad and Tobago law having the effect of requiring interest paid to be treated as a distribution by the Trinidad and Tobago company shall apply to interest paid to a resident of Switzerland only to the extent that the taxpayer is unable to demonstrate to the satisfaction of the taxing authorities of Trinidad and Tobago that the investment giving rise to the interest (and its denomination as indebtedness) did not have as its purpose the avoidance of Trinidad and Tobago tax.

ARTICLE 12

Royalties

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

2. However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that Contracting State, but the tax so charged shall not exceed ten 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 or 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 use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific 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.

SCHEDULE—Continued

4. Notwithstanding the provisions of paragraphs 1 and 2 of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (excluding royalties and like payments in respect of motion picture films and films or video tapes for use in connection with television and tapes for use in connection with radio) arising in one of the Contracting States and paid to a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

5. The provisions of paragraphs 1, 2 and 4 of this Article shall not apply if the recipient of the royalties, being a resident of one of the Contracting States, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 shall apply.

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

7. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalties paid, 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 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 payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Management Charges

1. Management Charges arising in one of the Contracting States and paid to a resident of the other Contracting State may be taxed in that other Contracting State.

2. However, such management charges may be taxed in the Contracting State in which they arise, and according to the law of that Contracting State, but the tax so charged shall not exceed five per cent of the gross amount of such payments.

3. The term "management charges" as used in this Article means payments for the provision of management and other personal, professional and technical services, where such payments are associated with services performed in one of the Contracting States by, or on behalf of, a resident of the other Contracting State.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the recipient has in the Contracting State in which the payments arise a permanent establishment with which such payments are effectively connected. In such a case, the provisions of Article 7 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 payments made, having regard to the services for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

SCHEDULE—*Continued*

ARTICLE 14

Personal Services

1. Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration in respect of an employment as well as income in respect of professional services or other independent activities of a similar character, derived by a resident of one of the Contracting States, shall be taxable only in that Contracting State, unless the employment, services or activities are exercised or performed in the other Contracting State. If the employment, services or activities are so exercised or performed, such remuneration or income as is derived therefrom may be taxed in that other Contracting State.

2. Notwithstanding the provisions of paragraph 1 of this Article, remuneration or income derived by a resident of one of the Contracting States in respect of an employment, services or activities exercised or performed in the other Contracting State shall be taxable only in the firstmentioned Contracting State if—

- (a) the recipient is present in the other Contracting State for a period or periods not exceeding in the aggregate:—
 - (i) one hundred and eighty-three days in the case of an employment; or
 - (ii) thirty days in the case of professional services or other independent activitiesin the calendar year concerned; and
- (b) the remuneration or income is paid by, or on behalf of, a person who is not a resident of the other Contracting State; and
- (c) the remuneration or income is not borne by a permanent establishment which that person has in the other Contracting State.

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

ARTICLE 15

Directors' fees

Directors' fees and similar payments derived by a resident of one of the Contracting States 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 Contracting State.

ARTICLE 16

Artistes and Athletes

Notwithstanding the provisions of Article 14, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised. The same shall apply, notwithstanding the provisions of Article 7, to the income accruing to a person who provides the services of public entertainers or of athletes.

ARTICLE 17

Governmental Functions

1. Remuneration, other than pensions, paid by one of the Contracting States or any political subdivision or a local authority thereof to any individual who is a national of that Contracting State in respect of services rendered to it in the discharge of Governmental functions shall be exempt from tax in the other Contracting State.

2. Pensions paid by one of the Contracting States or any political subdivision or a local authority thereof to any individual in respect of services rendered to it in the discharge of governmental functions shall be exempt from tax in the other Contracting State.

3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States or any political subdivision or local authority thereof for purposes of profit.

SCHEDULE—Continued

ARTICLE 18

Pensions

1. Any pension (other than a pension of the kind referred to in paragraph 2 of Article 17) and any life annuity derived from sources within one of the Contracting States by an individual who is a resident of the other Contracting State shall be exempt from tax in the firstmentioned Contracting State.

2. The term "life annuity" as used in this Article means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

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

ARTICLE 19

Students

1. Payments which a student or business apprentice who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting 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 other Contracting State.

2. An individual who is or was formerly a resident of one of the Contracting States and who is present in the other Contracting State for the purpose of study, research or training or of acquiring technical, professional or business experience and who exercises in that other Contracting State an employment for a period or periods not exceeding in the aggregate twelve months shall be exempt from tax in that other Contracting State for remuneration in respect of this employment provided that such employment is directly related to his studies, research, training or acquiring of experience and that the remuneration from the employment does not exceed 12,000 Swiss francs or the equivalent thereof in Trinidad and Tobago currency at the official rate of exchange.

ARTICLE 20

Elimination of Double Taxation

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

- (a) Swiss tax payable under the law of Switzerland and in accordance with the present Convention, whether directly or by deduction, on profits, or income from sources within Switzerland (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 Trinidad and Tobago tax 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 Switzerland to a company which is a resident of Trinidad and Tobago and which controls directly or indirectly at least ten per cent of the voting power of the company paying the dividends, the credit shall take into account (in addition to any Swiss tax creditable under (a) the Swiss tax payable by the company in respect of the profits out of which such dividend is paid;
- (c) the credit, however, shall in no case exceed that part of the tax as computed before the credit is given, which is appropriate to the income which may be taxed in Switzerland.

2. Where a resident of Switzerland derives items of income as are dealt with in this Convention which, in accordance with the provisions of the Convention, may be taxed in Trinidad and Tobago, Switzerland shall, subject to the provisions of paragraphs 3, 4 and 5 of this Article exempt such items of income from tax but may, in calculating tax on the remaining income of that person, apply the rate which would have been applicable if the exempted items of income had not been so exempted.

SCHEDULE—Continued

3. Where a resident of Switzerland derives dividends, interest, royalties or management charges which, in accordance with the provisions of Articles 10, 11, 12 and 13 may be taxed in Trinidad and Tobago, Switzerland shall allow, upon request, a relief to such person. The relief may consist of—

- (a) a deduction for the Swiss Tax on the income of that person of an amount equal to the tax levied in Trinidad and Tobago in accordance with the provisions of Articles 10, 11, 12 and 13; such deduction shall not, however, exceed that part of the Swiss income tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in Trinidad and Tobago; or
- (b) a lump sum reduction of the Swiss tax; or
- (c) a partial exemption of such dividends, interest, royalties or management charges for Swiss tax, in any case consisting at least of the deduction of the tax levied in Trinidad and Tobago from the gross amount of the dividends, interest, royalties or management charges.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Confederation for the avoidance of double taxation.

4. A company which is a resident of Switzerland and which derives dividends from a company which is a resident of Trinidad and Tobago shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

5. For the purposes of paragraph 3 of this Article, interest from loans entitled to an exemption or a reduction of the Trinidad and Tobago tax in accordance with the law of Trinidad and Tobago shall be deemed to have been subjected to the Trinidad and Tobago tax at the rate mentioned in paragraph 2 of Article 11. The same shall apply to dividends paid to an individual who is a resident of Switzerland in which case the rate of tax shall not exceed ten per cent.

ARTICLE 21

Non-discrimination

1. The nationals of one of the Contracting States 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 Contracting State in the same circumstances are or may be subjected.

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

The provisions of this paragraph shall not be construed as obliging one of the Contracting States to grant to residents of the other Contracting State those personal allowances and reliefs for tax purposes which are by law available only to residents of the firstmentioned Contracting State. The application of the provisions of paragraph 6 of Article 10 shall not be limited by the provisions of this paragraph.

3. Enterprises of one of the Contracting States, 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 firstmentioned Contracting State to any taxation or any requirement connected therewith which is either or more burdensome than the taxation and connected requirements to which other similar enterprise of that firstmentioned Contracting State are or may be subjected.

4. In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 22

Mutual Agreement Procedure

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

SCHEDULE—*Continued*

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 the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of 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 for the purpose of reaching an agreement in the sense of the preceding paragraphs of this Article.

ARTICLE 23

Diplomatic and Consular Officials

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

2. Insofar as, on account of fiscal privileges granted to diplomatic or consular officials under the general rules of international law or under the provisions of special international treaties, income is not subject to tax in the receiving State, the right to tax shall be reserved to the sending State.

3. For the purposes of the Convention, persons who are members of a diplomatic or consular mission of one of the Contracting States in the other Contracting State or in a third State and who are nationals of the sending State shall be deemed to be residents of the sending State if they are submitted therein to the same obligations in respect of taxes on income as are residents of that State.

4. The Convention shall not apply to International Organisations, to organs or officials thereof and to persons who are members of a diplomatic or consular mission of a third State, being present in one of the Contracting States and not treated in either Contracting State as residents in respect of taxes on income.

ARTICLE 24

Effective Date of Commencement

1. This Convention shall come into force when the Contracting States have notified each other through diplomatic channels that all legal requirements and procedures for giving effect to this Convention have been satisfied.

2. The provisions shall have effect:—

(a) in Trinidad and Tobago:

- (i) in respect of taxes withheld at the source on amounts paid, or remitted to non-residents on or after January 1, 1973; and
- (ii) in respect of other Trinidad and Tobago tax for the year of income commencing on January 1, 1973, and for subsequent years of income;

(b) in Switzerland, for any fiscal year beginning on or after January 1, 1973.

SCHEDULE—*Continued*

ARTICLE 25

Termination

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before June 30, in any calendar year, give notice of termination to the other Contracting State and in such event, this Convention shall not be effective:

(a) in Trinidad and Tobago:

- (i) in respect of tax withheld at the source on amounts paid, or remitted to non-residents on or after January 1, in the calendar year next following that in which the notice is given; and
- (ii) in respect of other Trinidad and Tobago tax for any year of income commencing on or after January 1, in the calendar year next following that in which the notice is given;

(b) in Switzerland, for any fiscal year beginning on or after January 1, in the calendar year next following that in which such notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed the present Convention.

DONE in duplicate this 1st day of February, 1973 at Port-of-Spain in the English and French languages, both texts being equally authoritative.

GEORGE CHAMBERS
for the Government of Trinidad and Tobago

ROGER DURR
for the Swiss Federal Council

Dated this 31st day of May, 1973.

D. H. N. ALLEYNE
Secretary to the Cabinet

