

LEGAL NOTICE NO. 206

REPUBLIC OF TRINIDAD AND TOBAGO

THE INCOME TAX ACT, CHAP. 75:01

ORDER

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

THE DOUBLE TAXATION RELIEF (LUXEMBOURG) ORDER,
2001

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

And whereas by Convention dated 7th May, 2001 made between the Government of the Republic of Trinidad and Tobago and the Government of the Grand Duchy of Luxembourg arrangements were made *inter alia* for the avoidance of double taxation:

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

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| Citation | 1. This Order may be cited as the Double Taxation Relief (Luxembourg) Order, 2001. |
| Convention between the Government of the Republic of Trinidad and Tobago and the Government of the Grand Duchy of Luxembourg | 2. It is hereby declared—
(a) that the Convention specified in the Schedule has been made with the Government of the Grand Duchy of Luxembourg; and
(b) that it is expedient that the said Convention shall have effect. |

SCHEDULE

CONVENTION BETWEEN

THE REPUBLIC OF TRINIDAD AND TOBAGO

AND THE GRAND DUCHY OF LUXEMBOURG

FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE

PREVENTION OF FISCAL EVASION WITH RESPECT

TO TAXES ON INCOME AND ON CAPITAL AND

FOR THE ENCOURAGEMENT OF INTERNATIONAL

TRADE AND INVESTMENT

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

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

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

(a) in the case of Trinidad and Tobago:

- (i) the corporation tax;
- (ii) the income tax;
- (iii) the unemployment levy;
- (iv) the petroleum profits tax;

(hereinafter referred to as "Trinidad and Tobago tax");

(b) in the case of Luxembourg:

- (i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);
- (ii) the corporation tax l'impôt sur le revenu des collectivites);
- (iii) the tax on fees of directors of companies (l'impôt special sur les tantiemes);
- (iv) the capital tax l'impôt sur la fortune);
- (v) the command trade tax (l'impôt commercial command);

(hereinafter referred to as "Luxembourg tax").

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

ARTICLE 3

General Definitions

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

- (a) the term “Trinidad and Tobago” means the Archipelagic State of Trinidad and Tobago, comprising the several islands of Trinidad and Tobago, its archipelagic waters, territorial sea and the airspace thereof, together with the adjacent submarine areas of the Exclusive Economic Zone and the continental shelf beyond the territorial sea over which Trinidad and Tobago exercises sovereign or other rights in accordance with the laws of Trinidad and Tobago and with international law;
- (b) the term “Luxembourg” means the Grand Duchy of Luxembourg;
- (c) the terms “a Contracting State” and “the other Contracting State” mean Trinidad and Tobago or Luxembourg, as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (g) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (h) the term “competent authority” means—
 - (i) in the case of Trinidad and Tobago, the Minister to whom the responsibility for Finance is assigned or his authorised representative;
 - (ii) in the case of Luxembourg, the Ministry of Finance or his authorised representative;
- (i) the term “national” means—
 - (i) any individual possessing the nationality of a Contracting State;

- (ii) any legal person, partnership and association deriving its status as such from the laws in force in a Contracting State;
- (j) the terms “paid”, “derived” and “received” when used with respect to income shall include amounts “credited”.

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

ARTICLE 4

Resident

1. For purposes of this Convention, the term “resident of a Contracting State” means—

- (a) any person who, under the laws of that State is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature;
- (b) that Contracting State or a local authority thereof or any agency or instrumentality of any State or authority.

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

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

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

ARTICLE 5

Permanent Establishment

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

2. The term “permanent establishment” includes especially—

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a warehouse in relation to a person providing storage facilities for others;
- (g) a store or other sales outlet;
- (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (i) a drilling rig or ship used for, or in connection with, the exploration or development of natural resources; and
- (j) a building site, a construction, assembly, dredging or installation project only if it lasts more than six (6) months;

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

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

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

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

5. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph but in such cases the provisions of paragraph 4 shall apply.

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

ARTICLE 6

Income from Immovable Property

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

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

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

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

ARTICLE 7

Business Profits

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

2. Notwithstanding the provisions of paragraph 1, where an enterprise of a Contracting State which has a permanent establishment in the other Contracting State carries on in that other State business activities of the same or similar kind as those effected through that permanent establishment, then in order to prevent abuse, the profits of such activities may be attributable to the permanent establishment unless the enterprise shows that such activities could not have been reasonably undertaken by the permanent establishment.

3. Subject to the provisions of paragraph 4, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

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

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

ARTICLE 8

Shipping and Air Transport

1. Profits of an enterprise from the operation or rental of ships or aircraft in international traffic and the rental of containers and related equipment which is incidental to the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

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

3. The provisions of paragraph 1 also apply to profits derived from participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where—

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

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

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

3. A Contracting State shall not change the profits of an enterprise in the circumstances referred to in this Article after the expiry of the time limits provided in its national laws.

ARTICLE 10

Dividends

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

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

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends;
- (b) 10 per cent of the gross amount of the dividends in all other cases.

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

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and in the case of Trinidad and Tobago, any item of income which under the laws of Trinidad and Tobago is treated as a distribution, and in the case of Luxembourg the investor’s share of the profit in a commercial, industrial, mining or craft undertaking, paid proportionally to the profits and by virtue of his capital outlay, as well as interest and payments on bonds, where, over and above the fixed rate of interest, a right of assignments is granted for supplementary interest varying according to the unretained earnings.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services) as the case may be shall apply.

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

6. Where a company which is a resident of a Contracting State having a permanent establishment in the other Contracting state, derives profits or income from that permanent establishment, any remittances or deemed remittances of such profits or income by the permanent establishment to the company which is a resident of the first-mentioned Contracting State may, notwithstanding any other provision of this Convention, be taxed in accordance with the law of the other Contracting State, but the rate of tax imposed on such remittances or deemed remittances shall not exceed 5 percent.

ARTICLE 11

Interest

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

2. However, such interest may also be taxed in the Contracting State in which it arises, and according to the laws of that State; but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed—

(a) 7.5 per cent of the gross amount of the interest, in the case of—

- (i) interest on commercial debt-claims-including debt-claims represented by commercial paper resulting from deferred payments for goods, merchandise or services supplied by an enterprise;
- (ii) interest on loans of any nature-not represented by bearer instruments-granted by a banking enterprise;

- (iii) interest on deposits—not represented by bearer instruments—with a banking enterprise;
 - (b) 10 per cent of the gross amount of the interest, in all other cases.
3. Notwithstanding the provisions of paragraph 2, interest shall be exempt from tax in the Contracting State in which it arises if it is—
- (a) interest derived by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of that Government or local authority
 - (b) interest paid by the Government of that Contracting State or a local authority thereof or any agency or instrumentality of that Government or local authority;
 - (c) interest paid in respect of a loan guaranteed or insured or a credit extended, guaranteed or insured by the Government of one of the Contracting States or a local authority thereof or any agency or instrumentality of that Government or local authority, the purpose of which is to promote export.
4. For the purposes of paragraph 3, the term “agency or instrumentality of that Government or local authority” means—
- (a) In the case of Trinidad and Tobago—
 - (i) the Central Bank of Trinidad and Tobago;
 - (ii) such other financial institution, the capital of which is wholly owned by the Government of the Republic of Trinidad and Tobago, as may be agreed upon from time to time between the competent authorities of the Contracting States;
 - (b) In the case of Luxembourg—
 - (i) the Société Nationale de Credit et d'Investissement”
 - (ii) The “Banque Centrale du Luxembourg”;
 - (iii) such other financial institution, the capital of which is wholly owned by the Government of the Grand Duchy of Luxembourg, as may be agreed upon from time to time between the competent authorities of the Contracting States.
5. The term “interest” as used in this Article means income from debt-claims of every kind whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits and, in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities bonds or debentures but shall not include any item which is treated as a distribution under the provisions of Article 10 (Dividends) of this Convention. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

6. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein or performs in that other State independent personal services from a fixed base situated therein and the debt-claim in respect of which the interest is paid is effectively connected with—

(a) such permanent establishment or fixed base; or

(b) business activities referred to under paragraph 2 of Article 7 (Business Profits).

In such cases the provisions of Article 7 (Business Profits), or Article 15 (Independent Personal Services) as the case may be shall apply.

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

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

ARTICLE 12

Royalties

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

2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. (a) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films and films, tapes, video tapes, or other means of transmission or reproduction of images or sound for use in connection with television or radio, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
- (b) The term does not include any royalties, rentals, or other amounts paid in respect of the operation of mines, oil or gas wells, quarries, or other natural resources.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the royalties being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with—

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to under paragraph 2 of Article 7 (Business Profits).

In such cases the provisions of Article 7 (Business Profits) or Article 15 (Independent Personal Services) as the case may be shall apply.

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

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

ARTICLE 13

Management Charges

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

2. However, such management charges may also be taxed in the Contracting State in which the person paying the management charges is a resident and according to the laws of that State, but the tax so charged shall not exceed 5 per cent of the gross amount of the charges.

3. The term “management charges” as used in this Article means charges by an enterprise made for the provision of management services or charges made for the provision of technical services and managerial skills.

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

(a) such a permanent establishment; or

(b) business activities referred to under paragraph 2 of Article 7 (Business Profits).

In such cases the provisions of Article 7 (Business Profits) shall apply.

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

ARTICLE 14

Capital Gains

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

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a contracting State in the other Contracting State for the purpose of performing independent services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

Independent Personal Services

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State—

- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or
- (b) if this stay in the other State is for a period or periods aggregating 183 days or more in any 12 consecutive months; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
- (c) if the remuneration for his activities in the other Contracting State is paid by a resident of that Contracting State or is borne by a permanent establishment or a fixed base situated in that Contracting State and exceeds in the year of income a sum of Euros 6,000.00 or its equivalent in Trinidad and Tobago currency.

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

ARTICLE 16

Dependent Personal Services

1. Subject to the provisions of Articles 17 (Directors' Fees), 19 (Pensions, Annuities and Social Security Payments), 20 (Government Service), 21 (Students and Trainees) and 22 (Teaching and Research), salaries, wages and other remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any 12 consecutive months;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or fixed base which the employer has in the other State.

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

ARTICLE 17

Directors' Fees

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

ARTICLE 18

Artistes and Sports Persons

1. Notwithstanding the provisions of Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services) income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as a sports person, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7 (Business Profits), 15 (Independent Personal Services), 16 (Dependent Personal Services), be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

3. Notwithstanding paragraphs 1 and 2, income derived from activities performed in a Contracting State by entertainers or sportspersons shall be exempt from tax in the Contracting State if the visit to that State is substantially supported by the other Contracting State.

ARTICLE 19

Pensions, Annuities and Social Security Payments

1. Subject to the provisions of paragraph 2 of Article 20, pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may also be taxed in the State in which they arise and according to the law of that State.

3. Notwithstanding the provisions of paragraphs 1 and 2, pensions and other payments made under a public scheme which is part of the social security system of a Contracting State shall be taxable only in that State.

4. (a) The term "annuity" 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.

(b) The term "pensions" as used in this Article, means any payments including lumpsum 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 20

Government Service

1. (a) Remuneration, other than a pension, paid by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.

- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that State who—
- (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
2. (a) Any pension paid by, or out of funds created by a Contracting State or a local authority thereof to an individual in respect of services rendered to that State or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that other State.
3. The provisions of Articles 16 (Dependent Personal Services), 17 (Directors' Fees), 18 (Artistes and Sportspersons) and 19 (Pensions, Annuities and Social Security Payments) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a local authority thereof.

ARTICLE 21

Students and Trainees

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

ARTICLE 22

Teaching and Research

1. An individual who is or was a resident of a Contracting State at the beginning of his visit to the other Contracting State and who, at the invitation of the Government of that other Contracting State or of a university or other educational institution situated in that other Contracting State and approved by the appropriate educational authority of that other Contracting State visits that other Contracting

State for a period not exceeding two (2) years for the primary purpose of teaching or research at such university or other educational institution shall be exempt from tax by that other Contracting State on his income from personal services for teaching or research at such university or other educational institution for a period not exceeding two (2) years from the date of his first arrival in that other Contracting State.

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

ARTICLE 23

Other Income

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

ARTICLE 24

Capital

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2. Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

3. Capital represented by ships and aircraft operated in international traffic and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 25

Elimination of Double Taxation

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

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

(i) Luxembourg tax payable under the laws of Luxembourg and in accordance with this Convention, whether directly or by deduction on profits or income from sources within Luxembourg (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 Luxembourg tax is computed;

(ii) in the case of a dividend paid by a company which is a resident of Luxembourg to a company which is a resident of Trinidad and Tobago and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account, in addition to any Luxembourg tax creditable under (a)(i), the Luxembourg tax payable by the company paying the dividends in respect of the profits out of which such dividend is paid.

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

2. In the case of Luxembourg, subject to the provisions of the law of Luxembourg regarding elimination of double taxation which shall not affect the general principle hereof double taxation shall be avoided as follows:

(a) where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this convention, may be taxed in Trinidad and Tobago, Luxembourg shall, subject to the provisions of sub-paragraphs (b), (c) and (d), exempt such income or capital from tax, but may, in order to calculate the amount of tax on the remaining income or capital of the resident, apply the same rates of tax as if the income or capital had not been exempted;

- (b) where a resident of Luxembourg derives income which, in accordance with the provisions of Articles 10 (Dividends), 11 (Interest), 12 (Royalties), 13 (Management Charges), 18 (Artistes and Sportspersons), 19, paragraph 2 (Pensions, Annuities and Social Security Payments) and 23 (Other Income) may be taxed in Trinidad and Tobago, Luxembourg shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in Trinidad and Tobago. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from Trinidad and Tobago;
- (c) where a company which is a resident of Luxembourg derives dividends from Trinidad and Tobago sources, Luxembourg shall exempt such dividends from tax, provided that the company which is a resident of Luxembourg holds, since the beginning of its accounting year, directly at least 10 per cent of the capital of the company paying the dividends and if this company is subject in Trinidad and Tobago to a corporation tax corresponding to the Luxembourg corporation tax. The above-mentioned shares in the Trinidad and Tobago company are, under the same conditions, exempt from the Luxembourg capital tax.

The exemption under this sub-paragraph shall also apply notwithstanding that the company of Trinidad and Tobago is exempted from tax or taxed at a reduced rate in Trinidad and Tobago in accordance with the laws of Trinidad and Tobago providing incentives for the purpose of encouraging investment in respect of agricultural, industrial, tourism activities and any other activities as may be mutually agreed by the competent authorities of both States;

- (d) where under the laws of Trinidad and Tobago the dividends are exempt or taxed at a rate which is lower than the 10 per cent referred to in paragraph 2 (b) of Article 10 for the purpose of encouraging investment in respect of agricultural, industrial, tourism activities and any other activities as may be mutually agreed by the competent authorities of both States, then such tax shall be deemed to have been paid for the purpose of calculating the credit referred to in sub-paragraph (b) of this paragraph at 10 per cent of the gross amount of such dividends.

The provisions of this sub-paragraph shall apply for a period of ten (10) years beginning on the first day of January of the calendar year next following the year in which this Convention enters into force. This period may be extended by mutual agreement between the competent authorities.

ARTICLE 26

Non-Discrimination

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

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

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

4. Except where the provisions of Article 9 (Associated Enterprises), paragraph 8 of Article 11 (Interest), paragraph 6 of Article 12 (Royalties), paragraph 5 of Article 13 (Management Charges) apply, interest, royalties, management charges and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

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

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

ARTICLE 27

Mutual Agreement Procedure

1. Where a person considers that the action of one or both of the Contracting States results or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective

of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 26 (Non-discrimination), to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.

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

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

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

ARTICLE 28

Exchange of Information

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

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

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

ARTICLE 29

Members of Diplomatic Missions and Consular Posts

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

ARTICLE 30

Miscellaneous Rules

1. Where income arising in a Contracting State is received by a company that is a resident of the other Contracting State and one or more persons who are not residents of that other Contracting State—

- (a) have directly or indirectly or through one or more companies, wherever resident, a substantial interest in such company, in the form of a participation or otherwise; or
- (b) exercise directly or indirectly, alone or together, the management or control of such company,

any provision of this Convention conferring an exemption from, or a reduction of tax shall not apply if more than 50 per cent of such income is used to satisfy claims by such persons (including interest, royalties, development, advertising, initial and travel expenses, and depreciation of any kind of business assets including those on immaterial goods and processes).

2. The foregoing provisions shall not apply where the company establishes that the principal purpose of the company, the conduct of its business and the acquisition or maintenance by it of the shareholding or other property from which the income in question is derived, are motivated by sound business reasons and do not have as its primary purpose the obtaining of any benefits under this Convention.

3. This Convention shall not apply to holding companies (*sociétés holding*) within the meaning of special Luxembourg laws, currently the Act (*loi*) of 31st July, 1929 and the Decree (*arrêté grand-ducal*) of 17th December, 1938. Neither shall it apply to income derived from such companies by a resident of Trinidad and Tobago nor to shares or other rights in such companies owned by such a person

ARTICLE 31

Entry into Force

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

- (a) in respect of taxes withheld at source, to income derived on or after the first day of January of the calendar year next following the year in which this Convention enters into force;
- (b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after the first day of January of the calendar year next following the year in which this Convention enters into force.

ARTICLE 32

Termination

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

2. In such event this Convention shall cease to have effect—

- (a) in respect of taxes withheld at source, to income derived on or after the first day of January of the calendar year next following the year in which the notice is given;
- (b) in respect of other taxes on income, and taxes on capital, to taxes chargeable for any taxable year beginning on or after the first day of January of the calendar year next following the year in which the notice is given.

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

DONE in duplicate at Luxembourg this 7th day of May, 2001 in the English and French languages, both texts being equally authentic.

MERVYN ASSAM
*for the Government of
the Republic of
Trinidad and Tobago*

CHARLES GOERENS
*for the Government of
the Grand Duchy
of Luxembourg*

Dated this 2nd day of October, 2001

A. LEUNG WOO-GABRIEL
Secretary to Cabinet