

TECHNICAL EXPLANATION OF THE CONVENTION BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND
THE GOVERNMENT OF THE ARAB REPUBLIC OF EGYPT
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME
SIGNED AT CAIRO ON AUGUST 24, 1980

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INTRODUCTION

This is a technical explanation of the Convention between the United States and Egypt, signed on August 24, 1980 ("the Convention"). This explanation is an official guide to the Convention. It reflects policies behind particular Convention provisions, as well as understandings reached with respect to the interpretation and application of the Convention.

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ARTICLE 1
Taxes Covered

Paragraph (1) designates the taxes of the Contracting States which are the subject of the Convention. With respect to the United States, the subject taxes are the Federal income taxes imposed by the Internal Revenue Code ("Code"). The United States taxes imposed under Code sections 531 (accumulated earnings tax) and 541 (personal holding company tax) are excluded, thus preserving for the United States the right to impose these taxes.

United States taxes not generally covered by the Convention include the estate, gift, and generation skipping transfer taxes, the Windfall Profits Tax, Federal unemployment taxes and social security taxes imposed under sections 1401, 3101 and 3111 of the Code.

In the case of Egypt, paragraph (1) provides that the Convention applies to the tax on income derived from immovable property (including the land tax, the building tax and the ghaffir tax); the tax on income from movable capital; the tax on commercial and industrial profits; the tax on wages, salaries, indemnities and pensions; the tax on profits from liberal professions and all other noncommercial professions; the general income tax; the defense tax; the national security tax; the war tax; and all supplementary taxes imposed as a percentage of any of the previously mentioned taxes.

Pursuant to paragraph (2), the Convention will also apply to taxes substantially similar to those covered by paragraph (1) which are imposed in addition to, or in place of, existing income taxes, after August 24, 1980, (the date of signature of the Convention).

Under paragraph (3), for purposes of Article 26 (Nondiscrimination), the Convention applies to taxes of every kind imposed at the national, state, or local level; and for purposes of Article 28 (Exchange of Information), the Convention applies to taxes of every kind imposed at the national level.

Paragraph (4) provides that the competent authority of each Contracting State will promptly notify the competent authority of the other Contracting State of any amendment of the tax laws referred to in paragraph (1), or of the adoption of substantially similar taxes imposed in addition to, or in place of, those taxes by transmitting the texts of such amendments or statutes. Paragraph (5) provides for a similar exchange with respect to the publication of official material concerning the application of the Convention, whether in the form of regulations, rulings or judicial decisions

ARTICLE 2 General Definitions

Paragraph (1) sets out definitions of certain basic terms used in the Convention. Unless the context otherwise requires, a term defined in this paragraph has a uniform meaning throughout the Convention. A number of important terms, however, are defined elsewhere in the Convention.

The term "United States" means the United States of America. When used in a geographical sense, the term means the states of the United States and the District of Columbia. Thus, the Convention does not apply to the possessions of the United States or the Commonwealth of Puerto Rico. The term "Egypt" means the Arab Republic of Egypt.

When used in a geographical sense, the terms "United States" and "Egypt" also include their respective territorial seas, and in general accord with the principles of section 638 of the Code, their respective continental shelves.

The term "Contracting State" is defined to mean the United States or Egypt as the context requires. The term "State" means the United States, Egypt, or any other national State.

The term "person" includes an individual, a partnership, a corporation, an estate or a trust.

The term "United States corporation" is defined as a corporation, or any unincorporated entity which is treated as a corporation for United States tax purposes, which is created or organized under the laws of the United States, any state thereof, or the District of Columbia. An "Egyptian corporation" is defined as a corporation, or any unincorporated entity which is treated as a corporation for Egyptian tax purposes, which is created or organized under the laws of Egypt.

With respect to the United States, the term "competent authority" means the Secretary of the Treasury or his delegate. With respect to Egypt, it means the Minister of Finance or his delegate. The term "tax" means those taxes imposed by the United States or Egypt to which the Convention applies by virtue of Article 1 (Taxes Covered).

The term "international traffic" is defined as any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State. Thus, for example, coastal shipping along the Atlantic coast of the United States is not a voyage in international traffic. However, if a ship operated by a resident of Egypt transports goods from Canada to the United States, leaving some of the goods in New York and the remainder in Norfolk, the portion of the voyage between New York and Norfolk is international traffic.

Paragraph (2) provides that any term used in the Convention which is not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of the Contracting State whose tax is being determined. However, where a term has a different meaning under the laws of Egypt and the United States, or where the meaning under the laws of one of the

Contracting States is not readily determinable, the competent authorities may for purposes of the Convention establish a common meaning, which may differ from the meaning under the laws of either Contracting States, in order to prevent double taxation or to further any other purpose of the Convention.

ARTICLE 3 Fiscal Residence

This Article sets forth rules for determining the residence of individuals, corporations, and other persons for purposes of the Convention. Residence is important because, in general, only a resident of one of the Contracting States may qualify for the benefits of the Convention. The Convention definition is, of course, exclusively for purposes of the Convention.

Under paragraph (a), the term "resident of Egypt" means an Egyptian corporation (as defined in paragraph (1)(f)(ii) of Article 2 (General Definitions)) or any other person (except a corporation or any entity treated under Egyptian law as a corporation) resident in Egypt for purposes of Egyptian tax. Similarly, "resident of the United States" means a United States corporation (as defined in paragraph (1)(f)(i) Article 2 (General Definitions)) and any other person (except a corporation or any entity treated as a corporation for United States tax purposes) resident in the United States for purposes of United States tax. Thus, a resident of the United States includes a resident alien individual, an alien present in the United states who elects to be treated as a resident under Code section 6013(g) or (h), and a resident citizen, but under no circumstances, a foreign corporation. A citizen of the United States or Egypt is not automatically a resident of the United States or Egypt for purposes of the Convention. Residence for this purpose is to be determined in accordance with the principles of Treasury regulations under section 871 of the Code.

The Convention provides that a partnership, estate, or trust is a resident of a Contracting State only to the extent that the income derived by such person is subject to tax in such Contracting State as the income of a resident. For example, under United States law, a partnership is never, and an estate or trust is often not, taxed as such. Under the Convention, in the case of the United States, income received by a partnership, estate, or trust will not qualify for the benefits of the Convention unless such income is subject to tax in the United States as the income of a resident. Thus, in effect, the treatment of income received by a partnership will be determined by the residence and taxation of its partners with respect to that income. To the extent that partners are subject to United States tax as residents of the United States, the partnership will be treated as a resident of the United States. Similarly, the treatment of income received by a trust or estate will be determined by the residence and taxation of the person subject to tax on such income, which may be the grantor, the beneficiaries or the trust or estate itself, as the case may be.

An individual who is a resident of one Contracting State under its laws and is not a resident of the other need look no further to determine his residence under the Convention. However, where he is a resident of each Contracting State under its laws, paragraph (2) of the Article must be used to determine that person's residence under the Convention.

Under paragraph (2), an individual who is a resident of both Contracting States under paragraph (1) will be deemed to be a resident of the Contracting State in which he has his permanent home, his center of vital interests (closest personal and economic relations), an habitual abode, or his citizenship, in the order listed. If the issue is not settled by these tests, the competent authorities will decide by mutual agreement the one Contracting State of which he will be considered to be a resident.

ARTICLE 4 Source of Income

This Article contains the source rules which are to be used in applying the provisions of the Convention. For example, under Article 6 (General Rules of Taxation), one Contracting State may tax a resident of the other Contracting State only on income from sources within the first-mentioned Contracting State (provided, with certain exceptions, such resident is not a citizen of the first-mentioned Contracting State).

Paragraph (1) provides that, as a general rule, dividends will be treated as income from sources within a Contracting State only if paid by a corporation of the Contracting State. This general rule will not apply in two cases. First, dividends paid by a United States corporation will be treated as income from sources within Egypt if such corporation's activities lie solely or mainly in Egypt and the dividend is taxed in Egypt in the manner prescribed in paragraphs (3) and (5) of Article 11 (Dividends). This rule is similar to that of Code sections 861(a)(2)(A) and 862(a)(1). See the explanation of paragraph (5) of Article 11 (Dividends) for a discussion of the effects of this rule. Second, dividends paid by a corporation other than a United States corporation will be treated as income from sources within the United States if at least 50 percent of such corporation's gross income from all sources for the 3-year period (or such part of that period as the corporation has been in existence) ending with the close of its taxable year preceding the declaration of the dividend was industrial or commercial profits attributable to a permanent establishment which such corporation had in the United States. The rule in the second case, though similar, differs from that of Code section 861(a)(2)(B) in that, for example, it does not specifically provide that only a pro rata portion of the dividend will be treated as income from sources within the United States. However, since Article 6 (General Rules of Taxation) provides, in effect, that the Convention will not increase a person's United States tax, the pro rata specified in Code section 861(a)(2)(B) will be applied to determine the portion of the dividend paid by such non-United States corporation which will be treated as United States source income.

Under paragraph (2), interest will be treated as income from sources within a Contracting State only if paid by the Contracting State, a political subdivision or a local authority thereof, or by a resident of the Contracting State. However, if interest is paid on an indebtedness incurred in connection with a permanent establishment which bears such interest, (i.e., deducts the interest in computing the income of the permanent establishment) then such interest shall be deemed to be from sources within the State (whether or not a Contracting State) in which the permanent establishment is situated. This exception permits a Contracting State, under the proper

circumstances, to impose a tax on interest paid by a permanent establishment of a resident of a State other than a Contracting State. For example, if a resident of France has a permanent establishment in Egypt which borrows money from a resident of the United States and bears the interest, the interest will be deemed to be from Egyptian sources. Thus, Egypt may tax such interest, subject to the limitation of Article 12 (Interest). As provided in paragraph (8) of Article 5 (Permanent Establishment) the principles of Article 5 will be applied to determine whether the resident of France has a permanent establishment in Egypt. The United States will not, because of sections 861(a)(1)(C) and (D) of the Code, impose a tax on interest received by nonresident alien individuals or foreign corporations from a foreign corporation having a permanent establishment in the United States unless 50 percent or more of the gross income of such corporation from all sources for the three year period ending with the close of its taxable year preceding the payment of the interest (or such part of such period as the corporation has been in existence) was effectively connected with the conduct of a trade or business within the United States. If it is, the U.S. will impose a tax on a pro rata portion of the interest.

In addition, the exception to the general rule of paragraph (2) of this Article will exempt interest from tax in the Contracting State in which the payor resides if the payor has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred, such interest is borne by the permanent establishment and such interest is paid to a resident of the other Contracting State. This results from the restriction in Article 6 (General Rules of Taxation) that a resident of one Contracting State, not a citizen of the other Contracting State, may be taxed by the other Contracting State only on income from sources within that other Contracting State.

Paragraph (3) provides that royalties for the use of, or the right to use, property or rights described in paragraph (2) of Article 13 (Royalties) will be treated as income from sources within a Contracting State only to the extent that such royalties are for the use of, or the right to use, such property or rights within that Contracting State.

Paragraph (4) provides that income and gains (including royalties) to which Article 7 (Income from Real Property) applies will be treated as income from sources within a Contracting State only if the real property is situated in that Contracting State. As noted in Article 7, paragraph (4) determines not only the source of a gain from the alienation of real property itself, but also of gains from the alienation of shares of a corporation, or of an interest in a partnership, estate, or trust the property of which consists principally of real property situated in a Contracting State.

Paragraph (5) provides that income from the rental of tangible personal (movable) property will be treated as income from sources within a Contracting State only if such property is situated in that Contracting State.

Under paragraph (6) income from the purchase and sale, exchange, or other disposition of intangible or tangible personal property (other than gains described in paragraph (2) of Article 13 (Royalties)) will be treated as income from sources within a Contracting State only if such sale, exchange, or other disposition is within that Contracting State.

Under paragraph (7), income received by an individual for his performance of labor or personal services, whether as an employee or in an independent capacity, will be treated as income from sources within a Contracting State only to the extent that such services are performed in that Contracting State. Income from personal services performed aboard ships or aircraft operated by a resident of a Contracting State in international traffic will be treated as income from sources within that Contracting State if rendered by a member of the regular complement of the ship or aircraft. However, remuneration described in Article 21 (Governmental Functions), and payments described in Article 20 (Social Security Payments) paid from the public funds of a Contracting State or political subdivision or local authority thereof will be treated as income from sources within that Contracting State only.

Paragraph (8) contains a general qualification to the preceding source rules. It provides that industrial or commercial profits attributable to a permanent establishment which the recipient, a resident of one Contracting State, has in the other Contracting State will be treated as income from sources within that other Contracting State. Industrial or commercial profits attributable to such permanent establishment may include any item of income described in paragraphs (1) through (6) if the item of income is "effectively connected" with the permanent establishment. See the discussion of paragraph (6) of Article 8 (Business Profits) for a discussion of the effectively connected concept.

Under paragraph (9), the source of any item of income not described in the preceding paragraphs of Article 4 will be determined by each Contracting State in accordance with its own law. However, if the source of any item of income under the laws of one Contracting State is different from its source under the laws of the other Contracting State or if its source is not readily determinable under the laws of one of the Contracting States, the competent authorities of the Contracting State may, in order to prevent double taxation or further any other purpose of the Convention, establish a common source of the item of income for purposes of the Convention. (See paragraph (2)(C) of Article 27 (Mutual Agreement Procedure)).

Several of the source rules set out in this Article differ to some degree from those provided in the Code. Since Article 6 (General Rules of Taxation) provides, in effect, that the Convention will not increase a person's overall United States tax, a taxpayer is not required to apply the Convention rules in calculating his United States tax liability. However, a taxpayer may not make inconsistent choices between Code and Convention rules.

ARTICLE 5 Permanent Establishment

This Article defines the term "permanent establishment." The existence of a permanent establishment is relevant under Article 8 (Business Profits) to the taxation of industrial or commercial profits and in determining the applicability of other provisions of the Convention.

Under paragraph (1), the term "permanent establishment" means a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity. Illustrations in paragraph (2) of a permanent establishment include a seat of

management; a branch; an office; a factory; a workshop; a mine, quarry or other place of extraction of natural resources; and the maintenance of a building site or construction or installation project which exists for more than six months. A drilling rig is included within this rule. Under the construction or installation project rule the six-month period begins only when work physically commences in the other Contracting State. A series of contracts or projects which are interdependent both commercially and geographically is to be treated as a single project for the purpose of applying the six months test. As a general rule, any fixed facility or premises through which a resident conducts industrial or commercial activity for an indefinite or substantial period of time will be treated as a permanent establishment unless it is used only for one or more of the activities described in paragraph (3).

Paragraph (3) specifically provides that a permanent establishment does not include a fixed place of business if it is used only for one or more of the following:

"(a) The use of facilities for the purpose of storage, display, or delivery of goods or merchandise belonging to the resident,

"(b) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery;

"(c) The maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person;

"(d) The maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the resident;

"(e) The maintenance of a fixed place of business for the purpose of advertising, or for similar activities which have a preparatory or auxiliary character, for the resident; and

"(f) The maintenance of a building site or construction or installation project which does not exist for more than 6 months."

As noted, these exceptions are cumulative and a fixed place of business used only for one or more of these purposes will not be considered a permanent establishment under the Convention.

Under paragraph (4), a person acting in one Contracting State on behalf of a resident of the other Contracting State, other than an agent of an independent status to whom paragraph (5) applies, will be deemed to constitute a permanent establishment if such person has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts in the name of the resident, unless the exercise of the authority is limited to the purchase of goods or merchandise for the resident.

On the other hand, paragraph (5) provides that a resident of one Contracting State will not be deemed to have a permanent establishment in the other Contracting State merely because such resident engages in industrial or commercial activity in such other Contracting State through a broker, general commission agent, or any other agent of an independent status, where such broker or agent is acting in the ordinary course of his business.

Paragraph (6) provides that a resident of one Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because such resident sells at the termination of a trade fair or convention in the other Contracting State goods or

merchandise which displayed by such resident at the trade fair or convention. The trade fair exception is not intended to apply with respect to goods in the resident's inventory.

Under paragraph (7), the determination of whether a resident of one Contracting State has a permanent establishment in the other Contracting State is to be made without regard to the fact that such resident may be related to a resident of the other Contracting State or to a person who engages in business in that other Contracting State (whether through a permanent establishment or otherwise). As defined in Article 10 (Related Persons), a person is related to another person if either person owns or controls directly or indirectly the other, or if a third person or persons own or control directly or indirectly both.

Paragraph (8) provides that the principles set forth in this Article are to be applied in determining whether there is a permanent establishment in a State other than one of the Contracting States or whether a person other than a resident of one of the Contracting States has a permanent establishment in one of the Contracting States. This is necessary for the proper application of paragraph (2) of Article 4 (Source of Income). This paragraph is not intended to extend the benefits of the Convention to persons other than residents of the two Contracting States.

ARTICLE 6 General Rules of Taxation

Under paragraph (1), a resident of one Contracting State may be taxed by the other Contracting State on any income from sources within that other Contracting State and only on such income, subject to the limitations set forth in the Convention. For this purpose, the source rules contained in Article 4 (Source of Income) are to be applied. However, if the resident is a citizen of the other Contracting State, that Contracting State may tax the resident without regard to this paragraph because of the saving clause of Paragraph (3) of this Article.

Paragraph (2) contains the customary rule that the Convention will not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of a Contracting State in the determination of a tax imposed by it, or by any other agreement between the Contracting States. Thus, if a deduction would be allowed under the Code for any item in computing the taxable income of an Egyptian resident, such deduction is generally available to such person in computing taxable income under the Convention. Paragraph (2) does not, however, authorize a taxpayer to make inconsistent choices between rules of the Code and rules of the Convention. In no event may the Convention increase the overall tax burden on residents of the Contracting States. Thus, a right to tax given by the Convention cannot be exercised unless that right also exists under the Code.

Paragraph (3) contains the traditional saving clause under which the United States reserves the right to tax its citizens and residents as if the Convention had not come into effect. However, because of paragraph (4), the saving clause does not apply in several cases in which its application would contravene policies reflected in the Convention which are specifically designed to extend treaty benefits to citizens or residents. Thus, the saving clause does not affect

the provisions with respect to child support, social security payments, relief from double taxation, nondiscrimination, or the mutual agreement procedure. Moreover, the saving clause does not affect the benefits of the Convention granted to individuals performing governmental functions, teachers, students, trainees, and diplomatic or consular officers who are neither citizens of, nor have immigrant status in, the Contracting State imposing the tax. In the case of the United States, "immigrant status" means the individual has been admitted to the United States for permanent residence. The saving clause is reciprocal.

Paragraph (5) authorizes the competent authorities of the Contracting State to prescribe regulations necessary to carry out the provisions of the Convention. For the United States, this authority is also provided by section 7805 of the Code.

ARTICLE 7 Income from Real Property

Under paragraph (1), income from real property, including royalties and other payments in respect of the exploitation of natural resources (e.g., oil wells), gains from the sale, exchange or other disposition of such property or the right giving rise to such royalties or other payments, and interest on indebtedness secured by real property (e.g., mortgages) or secured by a right giving rise to royalties or other payments in respect of the exploitation of natural resources, may be taxed by the Contracting State in which the real property or natural resources are situated. Thus, natural resource royalties are covered under this Article and not under Article 13 (Royalties).

Under paragraph (2), paragraph (1) applies to income derived from the usufruct, direct use, letting, or use in any other form of real property.

Paragraph (3) provides, consistent with U.S. law, that gains from the alienation of shares of a corporation or of an interest in a partnership, estate, or trust, the property of which consists, directly or indirectly, principally of real property situated in a Contracting State, shall be regarded as income from real property. Thus, under paragraph (1) of the Article, such gains may be taxed in the Contracting State in which the real property is situated, and under paragraph (4) of Article 4 (Source of Income), the gain is treated as having its source in that State.

Paragraph (4) emphasizes what is clearly implied in paragraph (1), that income from real property (including that referred to in paragraph (3)) may be taxed by both the State of residence and the State in which the real property is situated.

This Article does not contain a provision allowing for the taxation of real property income on a net basis. This is because such treatment is already provided for under the laws of both Contracting States.

ARTICLE 8 Business Profits

Paragraph (1) sets forth the general rule that industrial or commercial profits of a resident of one Contracting State are exempt from tax by the other Contracting State unless the resident has a permanent establishment in the other Contracting State. Where there is a permanent establishment, only the industrial or commercial profits attributable to the permanent establishment can be taxed by the other Contracting State, unless the resident is a citizen of that other Contracting State. (See the saving clause in paragraph (3) of Article 6 (General Rules of Taxation)). Under paragraph (8) of Article 4 (Source of Income), industrial or commercial profits whether from sources within or without a Contracting State attributable to a permanent establishment which a resident of one Contracting State has in the other Contracting State will be considered to be from sources within that other Contracting State. Thus, items of income described in section 864(c)(4)(B) of the Code attributable to a permanent establishment situated in the United States will be subject to tax by the United States. The limited "force of attraction" rule under Code section 864(c)(3) does not apply for U.S. tax purposes under the Convention.

In determining the proper attribution of industrial or commercial profits under the Convention, paragraph (2) provides that both Contracting States will attribute to the permanent establishment such profits as it would reasonably be expected to derive if it were an independent entity engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the resident of which it is a permanent establishment. Under paragraph (3), expenses, wherever incurred, which are reasonably connected with profits attributable or apportionable to the permanent establishment, including executive and general administrative expenses, will be allowed as deductions in determining the industrial or commercial profits of the permanent establishment. However, in determining the amount of the deduction under paragraph (3) for expenses incurred by the head office, the deduction generally will be limited to the appropriate share of the expense incurred without including a profit element for the head office.

Paragraph (4) provides that no profits shall be attributed to a permanent establishment merely because of the purchase of goods or merchandise by that permanent establishment, or by the resident of which it is a permanent establishment, for the account of such resident. Paragraph (2) of the Article does not override paragraph (4). Thus, where a permanent establishment purchases goods for its head office, the industrial and commercial profits attributed under paragraph (2) to the permanent establishment with respect to its other activities will not be increased by adding a notional figure for profits from purchasing.

Under paragraph (5), the term "industrial or commercial profits" includes income derived from manufacturing, mercantile, banking, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft, the furnishing of services, the rental of tangible personal (movable) property, and the rental or licensing of motion picture films or films or tapes used for radio or television broadcasting. The term does not include income from the performance of personal services derived by an individual either as an employee or in an independent capacity.

Under paragraph (6) of this Article, the term "industrial and commercial profits" also includes income from dividends, interest, royalties described in paragraph (2) of Article 13 (Royalties), and capital gains and income derived from property and natural resources, but only

if the income is effectively connected with a permanent establishment. See paragraph (4) of Article 11 (Dividends), paragraph (5) of Article 12 (Interest), paragraph (3) of Article 13 (Royalties) and paragraph (1)(c) of Article 14 (Capital Gains).

Paragraph (6) also contains criteria for determining whether income is effectively connected with a permanent establishment. Factors to be taken into account include whether the rights or property giving rise to such income are used in or held for use in carrying on an activity giving rise to industrial or commercial profits through a permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income. For this purpose, due regard will be given to whether or not such property or rights or such income were accounted for through such permanent establishment.

Under paragraph (7), where industrial or commercial profits include items of income which are dealt with separately in other articles of the Convention, the provisions of those article will, except as otherwise provided therein, supersede the provisions of; this Article. Thus, for example, taxation of interest income (other than interest treated as income from real property under paragraph (1) of Article 7 (Income from Real Property)) will be controlled by Article 12 (Interest) and not by this Article unless the interest is effectively connected with a permanent establishment.

ARTICLE 9 Shipping and Air Transport

Paragraph (1) provides that, notwithstanding Article 8 (Business Profits), income derived by a resident of one Contracting State from the operation in international traffic of ships or aircraft, shall be exempt from tax by the other Contracting State. Gains from the sale, exchange, or other disposition of ships or aircraft are dealt within the general rule of paragraph (1) of Article 14 (Capital Gains).

Under paragraph (2), this Article applies to income derived from the rental of such ships or aircraft under a full or bareboat charter if the lessor is engaged in the operation of ships or aircraft in international traffic and the rental income is incidental to such operations of the lessor. For example, if an airline which is a resident of one Contracting State has excess equipment in the winter months and leases several of its aircraft which are not required by it during that period to an airline which is a resident of the other Contracting State, that rental income of the lessor is not subject to tax by the other Contracting State.

Paragraph (2) also makes clear that the Article applies to income derived by a resident of one Contracting State from the use, maintenance, and lease of containers, trailers for the inland transportation of containers and other related equipment in connection with the operation by the resident in international traffic of ships or aircraft described in paragraph (1).

Paragraph (2) makes explicit that income derived from the operation in international traffic of ships or aircraft means income derived directly from the operation of ships or aircraft and does not include dividends received by a shareholder in a corporation, where such

corporation operates ships or aircraft in international traffic.

This Article is subject to the saving clause of paragraph (3) of Article 6 (General Rules of Taxation). Therefore, a Contracting State may tax income from international traffic derived by a resident of the other Contracting State without regard to this Article if such resident is a citizen of the first-mentioned Contracting State.

Paragraph (3) provides that the limited existing exemption of U.S. air transport enterprises afforded by Decree to the Egyptian Council of Ministers of November 23, 1955 shall cease to have effect upon entry into force of this Convention.

ARTICLE 10 Related Persons

This Article complements section 482 of the Code and confirms the authority of the United States under that section. Thus, where a person subject to the taxing jurisdiction of a Contracting State (whether or not a resident thereof) and any other related person make arrangements or impose conditions between themselves which are different from those which would be made between independent persons, under paragraph (1), any income, deductions, credits or allowances which would, but for those arrangements or conditions, have been taken into account in computing the income or loss of, or the tax payable by, one of such persons, may be taken into account in computing the amount of the income subject to tax and the taxes payable by such person in the Contracting State.

Paragraph (2) sets forth an explicit formulation of the consequence of a redetermination made in accordance with paragraph (1) by a Contracting State to the income of one of its residents. In such event, the other Contracting State will, if it agrees with such redetermination and if necessary to prevent double taxation, make a corresponding adjustment to the income of a person in such other Contracting State related to such resident. If the other Contracting State disagrees with the redetermination, the two Contracting States will endeavor to reach agreement in accordance with the mutual agreement procedure in paragraph (2) of Article 27 (Mutual Agreement Procedure)

Paragraph (3) provides that for purposes of the Convention a person is related to another person if either person owns or controls directly or indirectly the other, or if a third person or persons own or control directly or indirectly both. "Control" includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

ARTICLE 11 Dividends

Paragraph (1) provides that dividends derived from sources within one Contracting State by a resident of the other Contracting State may be taxed by both Contracting States.

Paragraph (2) limits the rate of tax imposed by the United States to a rate not in excess of fifteen percent of the gross amount of the dividends paid by a United States corporation to an Egyptian resident. However, if the dividend recipient is an Egyptian corporation, the rate of tax imposed by the United States may not exceed five percent of the gross amount of the dividend paid by a United States corporation. This additional rate limitation only applies if during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year (if any), at least ten percent of the outstanding voting stock of the paying corporation was owned by the recipient corporation, and not more than twenty-five percent of the gross income of the paying corporation for such prior taxable year (if any) consists of interest or dividends (other than interest derived from the conduct of a banking, insurance, or financing business and dividends or interest received from subsidiary corporations, fifty percent or more of the outstanding voting stock of which is owned by the paying corporation at the time such dividends or interest is received). These rate limitations do not affect the taxation of profits of the company which pays the dividends.

Paragraph (3) provides that dividends paid by an Egyptian corporation to a resident of the United States will be subject to the following Egyptian taxes (and substantially similar taxes enacted after August 24, 1980) to be deducted at the source:

- (a) the tax on income derived from movable capital;
- (b) the defense tax;
- (c) the national security tax;
- (d) the war tax; and
- (e) the supplementary taxes computed on the basis of the previously mentioned taxes (these taxes are hereinafter referred to collectively as "taxes on income from movable capital").

However, to the extent such dividends are distributed out of the current year's earnings, the amount of such dividend will be allowed as a deduction to the corporation in computing its taxable profits subject to the Egyptian taxes on industrial and commercial profits. Dividends paid to a U.S. corporation will not be subject to any other Egyptian taxes.

The rate of the taxes on income from movable capital is essentially the same as that of the taxes on industrial and commercial profits. Thus, double taxation by Egypt is avoided under internal Egyptian law to the extent earnings are distributed currently. Conversely, if current earnings are not distributed, such earnings will be subject to the taxes on industrial and commercial profits in the year earned and to the taxes on income from movable capital in the year distributed.

In the case of dividends paid to a natural person who is a resident of the United States, paragraph (3) provides that Egypt may also impose its graduated general income tax on such dividends in addition to the taxes on income from movable capital. However, in applying these graduated rates, the total general income tax on the dividend income of an individual may not exceed an average of 20 percent of the net dividends. Thus, where the Egyptian taxable income of the individual is so small that the marginal rate applicable to the dividends is less than 20 percent, the tax will fall below the maximum; and where the aggregate income is so large that the marginal rates exceed 20 percent, the higher marginal rates will apply, but only to the point

where the average rate of general income tax on the income does not exceed 20 percent.

Paragraph (4) provides that the limitations of paragraphs (2) and (3) will not apply if the dividends are treated, under paragraph (6) of Article 8 (Business Profits), as industrial or commercial profits attributable to a permanent establishment which the recipient has in the source Contracting State. In such case, the provisions of Article 8 (Business Profits) will apply. If the recipient of the dividend is a citizen of the source Contracting State, that Contracting State may tax the recipient without regard to this Article because of the saving clause of paragraph (3) of Article 6 (General Rules of Taxation).

Paragraph (5) provides that Egypt may tax dividends paid by a United States corporation whose activities lie solely or mainly in Egypt as though paid by an Egyptian corporation. Accordingly, dividends paid by such a corporation to United States residents will be taxed in the manner prescribed in paragraph (3) of this Article. Thus, a United States corporation whose activities lie solely or mainly in Egypt, even though its head or administrative office is outside Egypt, will be subject to the Egyptian taxes on industrial and commercial profits computed on its income after deducting the amount of current income distributed as dividends. Such dividends, in turn, will be subject to the taxes on income from movable capital which are deducted at the source; and, by virtue of paragraph (1)(a) of Article 4 (Source of Income), such dividends will be treated as income from sources within Egypt. The factors determining when a foreign company's activities lie solely or mainly in Egypt are not specified in the treaty or in Egyptian statutory law; however, the Egyptian tax authorities take into account such elements as the corporation's charter, balance sheet, and profit and loss statement, and the ratio of profits from sources in Egypt to total profits. In substance, this provision reflects those aspects of internal Egyptian tax law which, in order to avoid discrimination between Egyptian and foreign corporations, treat foreign corporations most of whose activities are conducted through an Egyptian branch as Egyptian corporations for Egyptian tax purposes.

Paragraph (6) applies to the yearly profits attributable to an Egyptian permanent establishment of a United States corporation (other than a United States corporation specified in paragraph (5)) which are deemed distributed currently as a dividend in accordance with the provisions of Egyptian taxation law. These dividends deemed paid will be deductible for purposes of computing the income subject to the taxes on industrial and commercial profits and hence they will be subject only to the Egyptian taxes specified in paragraph (3).

Paragraph (7) defines the term "dividends" to mean income from shares and similar rights, which are not debt claims and which participate in profits. The term includes income from other corporate rights which is treated as income from shares under the taxation laws of the State of residence of the corporation making the distribution. Each Contracting State may apply its domestic law rules for differentiating dividends from interest and other disbursements, subject to an agreement between the competent authorities as to a common meaning. See paragraph (2) of Article 2 (General Definitions).

ARTICLE 12

Interest

Paragraph (1) provides that interest derived by a resident of one Contracting State from sources within the other Contracting State may be taxed by both Contracting States. However, paragraph (2) limits the rate of tax in the Contracting State of source to a rate not in excess of 15 percent of the gross amount of the interest.

Paragraph (3) provides that interest beneficially derived by one of the Contracting States, or by an instrumentality of that Contracting State not subject to tax by that Contracting State on its income, will be exempt from tax by the other Contracting State. Under this rule, interest income derived by the Export-Import Bank of the United States and the Overseas Private Investment Corporation (OPIC) on loans, made to Egyptian residents will be exempt from tax in Egypt. The exemption also applies where a resident of a Contracting State receives interest income with respect to debt obligations made, guaranteed or insured by that Contracting State or an instrumentality thereof.

Paragraph (4) provides that interest paid by a resident of one Contracting State to a person other than a resident of the other Contracting State (and in the case of interest paid by a resident, of Egypt, to a person other than a United States citizen) will be exempt from tax by the other Contracting State unless such interest is treated as income from sources within the other Contracting State under paragraph (2) of Article 4 (Source of Income).

Paragraph (5) provides that the limitations of paragraphs (2), (3) and (4) will not apply if the interest is treated, under paragraph (6) of Article 8 (Business Profits), as industrial or commercial profits attributable to a permanent establishment which the recipient has in the source Contracting State. In such a case, the provisions of Article 8 (Business Profits) will apply.

If excessive interest is paid to a related person, paragraph (6) provides that the Article does not apply to the excessive portion of the payment. The excessive portion may be taxed by each Contracting State according to its own laws, including the Convention, where applicable. In the case of the United States, the excessive portion may be taxed as a dividend, in which case the provisions of Article 11 (Dividends) will apply.

Paragraph (7) defines interest for purposes of the Convention as income from money lent and other income which under the taxation law of the Contracting State in which the income has its source is assimilated to income from money lent. However, the term "interest" does not include interest on indebtedness secured by mortgages on real estate or other amounts considered income from real property under Article 7 (Income from Real Property) and to which the provisions of Article 7 apply.

This Article is subject to the saving clause of paragraph (3) of Article 6 (General Rules of Taxation). Therefore, interest derived by a citizen of the source Contracting State may be taxed by that Contracting State without regard to this Article.

ARTICLE 13

Royalties

Paragraph (1) provides that royalties derived by a resident of one Contracting State from sources within the other Contracting State may be taxed by both Contracting States. However, paragraph (1) limits the tax in that other Contracting State to a rate not to exceed 15 percent of the gross amount of such royalty.

The term "royalties" is defined in paragraph (2) as payments of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works (but not including copyrights of motion picture films or films or tapes used for radio or television broadcasting which are industrial and commercial profits within the meaning of paragraph (5) of Article 8 (Business Profits)), and patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or rights. The term "royalties" also includes gains derived from the sale, exchange, or other disposition of such property or rights to the extent the amounts realized on such sale, exchange or other disposition for consideration are contingent on the productivity, use, or disposition of the property or rights. If the amounts realized are not so contingent, the provisions of Article 14 (Capital Gains) may apply.

Paragraph (3) provides that the tax rate limitations of paragraph (1) shall not apply if the royalty is treated, under paragraph (6) of Article 8 (Business Profits), as industrial or commercial profits attributable to a permanent establishment which the recipient, a resident of one Contracting State, has in the other Contracting State. In such a case, the provisions of Article 8 will apply.

Paragraph (4) provides that this Article will not apply to dividends paid on founders' shares issued in Egypt as consideration for the rights mentioned in paragraph (2) of this Article and which are taxed in Egypt in accordance with the provisions of Article 1 of Law No.14 of 1939. In such case, the Provisions of Article 11 (Dividends) will apply.

If excessive royalties are paid to a related person, paragraph (5) provides that the Article does not apply to the excessive portion of the royalty. The excessive portion may be taxed by each Contracting State according to its own laws, including the Convention where applicable. Thus, in the case of the United States, the excessive portion may be treated as a dividend or interest, or in whatever other manner is appropriate.

As noted under paragraph (3) of Article 4 (Source of Income), royalties (including contingent gains) will be treated as income from sources within a Contracting State only to the extent they are payments made as consideration for the use of, or the right to use, property or rights described in paragraph (2) within that Contracting State. This source rule is similar to the source rule in section 861(a)(4) of the Code.

This Article is subject to the saving clause of paragraph (3) of Article 6 (General Rules of Taxation). Therefore, royalties derived by a citizen of the source Contracting State may be taxed by that Contracting State without regard to this Article.

ARTICLE 14

Capital Gains

Under paragraph (1), a resident of one Contracting State will be exempt from tax by the other Contracting State on gains from the sale, exchange, or other disposition of capital assets. However, the exemption does not apply if

(a) the gain is from the sale, exchange or other disposition of property described in Article 7 (Income from Real Property) situated within the other Contracting State;

(b) the gain is from the sale, exchange or other disposition of property described in paragraph (2)(b) of Article 13 (Royalties);

(c) the gain is treated, under paragraph (6) of Article 8 (Business Profits), as industrial or commercial profits attributable to a permanent establishment which the recipient has in the other Contracting State; or

(d) the gain is realized by an individual resident of one Contracting State who is present in the other Contracting State for a period or periods aggregating 183 days or more during the taxable year.

For purposes of this Article and the other physical presence tests contained in the Convention with regard to an individual, the term "day" means a calendar day during any portion of which the individual is physically present in the relevant Contracting State.

Paragraph (2) provides that the provisions of Article 7 (Income from Real Property) will apply to real property gains; the provisions of Article 13 (Royalties) will apply to certain royalty gains; and the provisions of Article 8 (Business Profits) will apply to gains attributable to a permanent establishment.

If the recipient of the gain is a resident of one Contracting State and a citizen of the other Contracting State, that other Contracting State may tax the recipient without regard to this Article because of the saving clause of paragraph (3) of Article 6 (General Rules of Taxation).

ARTICLE 15 Independent Personal Services

In dealing with the taxation of income from personal services the Convention distinguishes between "independent" and "dependent" personal services. The Convention also provides special treatment for individuals who are "public entertainers" and for amounts received for furnishing the personal services of others.

Under paragraph (1), income derived by an individual resident of one Contracting State from the performance of personal services in an independent capacity may be taxed only by that Contracting State. However, under paragraph (2), such income derived from services performed in the other Contracting State may also be subject to tax in that other Contracting State if the individual is present therein for a period or periods aggregating 90 days or more in the taxable year. Under the saving clause of paragraph (3) of Article 6 (General Rules of Taxation), the other Contracting State may also tax any individual who is a citizen of that other Contracting State without regard to this Article.

Services performed by an individual in an independent capacity are services performed for his own account where he receives the income and bears the losses arising from such services. Generally, as noted in paragraph (3), the term "personal services in an independent capacity" includes but is not limited to, scientific, literary, artistic, educational, or teaching activities as well as services rendered by physicians, lawyers, engineers, architects, dentists and accountants performing personal services.

ARTICLE 16 Dependent Personal Services

Under paragraph (1), wages, salaries, and similar remuneration derived by an individual who is a resident of one Contracting State from labor or personal services performed as an employee, including income from services performed by an officer of a corporation or company, may be taxed by that Contracting State, except as provided in Articles 21 (Governmental Functions), 22 (Teachers), and 23 (Students and Trainees). In addition, except as provided by paragraph (2) and Articles 19 (Private Pensions and Annuities), 21 (Governmental Functions), 22 (Teachers), and 23 (Students and Trainees), such remuneration derived from sources within the other Contracting State may be taxed by that other Contracting State.

Under paragraph (2), dependent personal service income derived by an individual resident of one Contracting State will be exempt from tax by the other Contracting State if:

- (a) the individual is present in that other Contracting State for a period or periods aggregating less than 90 days in the taxable year;
- (b) the individual is an employee of a resident of the first-mentioned Contracting State or of a permanent establishment maintained in the first-mentioned Contracting State;
- (c) the remuneration is not borne as such (i.e., as a deduction for salary payments) by a permanent establishment which the employer has in the other Contracting State; and
- (d) the remuneration is subject to tax in the first-mentioned Contracting State.

Income of a United States citizen or resident which is excluded from tax by reason of section 911 is not considered subject to tax by the United States. Dependent personal service income may also be taxed by that other Contracting State without regard to this Article if the individual is a citizen of that other Contracting State, because of the saving clause of paragraph (3) of Article 6 (General Rules of Taxation).

Under paragraph (3), and notwithstanding paragraphs (1) and (2), remuneration derived by an employee (even if a resident of a State other than a Contracting State) of a resident of one Contracting State for labor or personal services performed as a member of the regular complement of a ship or aircraft operated in international traffic by a resident of that Contracting State may be taxed by that Contracting State.

ARTICLE 17

Public Entertainers

This Article provides that, notwithstanding Articles 15 (Independent Personal Services) and 16 (Dependent Personal Services), income derived by an individual resident of one Contracting State from his performance of personal services in the other Contracting State as a public entertainer, such as a theater, motion picture, radio or television artist, a musician, or athlete, may be taxed by the other Contracting State only if the gross amount of such income exceeds \$400 or its equivalent in Egyptian pounds for each day the individual is present in the other Contracting State for the purpose of performing such services therein. If the entertainer's gross income exceeds \$400 per day he may be taxed on the full amount of his income, not just the amount in excess of \$400.

If the individual receives a fixed amount for performing the services on more than one day, the amount received will be prorated over the number of days the individual performs the services. Thus, for example, if an entertainer resident in Egypt receives \$5,000 to perform in a series of 5 concerts in the United States on 5 different days and spend an additional 5 days in the United States in rehearsal for those concerts over a two week period, he will be considered to have received \$500 for each day and thus, pursuant to this Article, he may be taxed by the United States.

Income derived from services rendered by producers, directors, technicians, and others who are not public entertainers is taxable in accordance with the provisions of Article 15 (Independent Personal Services), or 16 (Dependent Personal Services), as the case may be.

Under the saving clause of paragraph (3) of Article 6 (General Rules of Taxation), if the individual is a citizen of a Contracting State that State may tax his income without regard to this Article.

ARTICLE 18

Amounts Received For Furnishing Personal Services of Others

Paragraph (1) provides that, notwithstanding the provisions of Article 8 (Business Profits), amounts received by a resident of one Contracting State in consideration of furnishing in the other Contracting State the personal services of one or more other persons, including a public entertainer referred to in Article 17 (Public Entertainers), may be subject to tax under the taxation laws of each Contracting State to the extent that: the person for whom the services were furnished designated the person or persons who would render the services, whether or not he had the legal right to do so and whether or not the designation was made formally; the person for whom the services were furnished had the right to designate the person or persons who would render the services; or, by reason of the facts and circumstances, the arrangement for personal services had the effect of designating the person or persons who would render the services; and the resident of the first-mentioned Contracting State directly or indirectly pays compensation for such services to any person, other than another resident of the first-mentioned Contracting State or of that other Contracting State who is subject to tax on such compensation. If this paragraph applies, the amounts received for providing personal services of other individuals in the other

Contracting State may be taxed by that other Contracting State even though not attributable to a permanent establishment.

Paragraph (2) provides that paragraph (1) will not apply if it is established to the satisfaction of the competent authority of that other Contracting State with respect to any amount received that neither the creation nor organization of the resident of the first-mentioned Contracting State (where such resident is a corporation or other entity) nor the furnishing of the services through such resident has the effect of a substantial reduction in income, war profits, excess profits, or similar taxes. The taxes referred to in the preceding sentence are those enumerated in Article 1 (Taxes Covered) which are imposed by the two Contracting States.

ARTICLE 19 Private Pensions and Annuities

Except as provided in Article 21 (Governmental Functions), pensions and other similar remuneration paid to an individual will be taxable under paragraph (1) only in the Contracting State of which he is a resident. Thus, private pensions and similar remuneration derived from sources within one Contracting State by an individual resident of the other Contracting State are exempt from tax in the first-mentioned Contracting State. Pensions for Government service are dealt within Article 21 (Governmental Functions). The term "pensions and other similar remuneration" is defined in paragraph (4) as periodic payments, other than social security payments covered in Article 20 (Social Security Payments), made by reason of retirement or death and in consideration for services rendered, or by way of compensation for injuries or sickness received in connection with past employment.

Paragraph (2) provides that alimony and annuities paid to an individual resident of a Contracting State will be taxable only in that Contracting State. The term annuities is defined in paragraph (5) as a stated sum paid periodically at stated times during life, or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than for services rendered). The term "alimony" is defined in paragraph (6) as periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support which are taxable to the recipient under the internal laws of the Contracting State of which he is a resident. Thus, the term "alimony" would not include a payment which would not be taxable to the recipient under the laws of the Contracting State in which he is resident even though such payment is made pursuant to a decree of divorce or of separate maintenance.

Paragraph (3) provides that child support payments made by an individual resident of one Contracting State to an individual resident of the other Contracting State will be exempt from tax in that other Contracting State. The term "child support payments" is defined in paragraph (7) as periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance, or compulsory support.

Except for paragraph (3), dealing with child support, this Article is subject to the saving clause of paragraph (3) of Article 6 (General Rules of Taxation). Therefore, individuals who are

citizens or residents of a Contracting State may be taxed by that Contracting State without regard to this Article.

ARTICLE 20 Social Security Payments

This Article provides that social security payments and other public pensions, e.g., railroad retirement benefits, paid by one Contracting State to an individual who is a resident of the other Contracting State shall be taxable only in that other Contracting State. Payments described in Article 21 (Governmental Functions) are not covered by this Article.

Under paragraph (2) of Article 32 (Termination), this Article may be terminated by either Contracting State at any time after the Convention enters into force.

Under paragraph (4)(a) of Article 6 (General Rules of Taxation), the saving clause of paragraph (3) of Article 6 does not apply to the provisions of this Article. Thus, the exemption applies even to a citizen of a Contracting State.

ARTICLE 21 Governmental Functions

Under paragraph (1) of this Article, wages, salaries, or similar remuneration, including pensions, annuities, or similar benefits, paid from public funds of one Contracting State to a citizen of that Contracting State, or to a citizen of a State other than a Contracting State who comes to the other Contracting State expressly for the purpose of being employed by the first-mentioned Contracting State, for labor or personal services performed as an employee of the national Government of that Contracting State, or any agency thereof, in the discharge of functions of a governmental nature will be exempt from tax by the other Contracting State. If the individual becomes a citizen of, or acquires immigrant status in, the other Contracting State, that other Contracting State may tax the individual without regard to this Article. See paragraphs (3) and (4)(b) of Article 6 (General Rules of Taxation).

Whether services will be treated as performed in the discharge of governmental functions may be determined by reference to the concept of a governmental function in the State in which the income arises. Thus, as provided in paragraph (2), remuneration or pensions paid in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or any agency thereof will be treated the same as compensation received from a private employer, and the provisions of Articles 16 (Dependent Personal Services) and 19 (Private Pensions and Annuities) will apply.

This Article applies only to remuneration paid by the national Government or agencies of the national Government of a Contracting State.

ARTICLE 22
Teachers

Paragraph (1) provides that, if a resident of one Contracting State is invited by the other Contracting State, a political subdivision or local authority thereof, or by a university or other recognized educational institution in that other Contracting State to come to that other Contracting State for a period not expected to exceed two years for the purpose of teaching or engaging in research, or both, at a university or other recognized educational institution, and if such resident comes to that other Contracting State primarily for such purpose, his income from personal services for teaching or research at such university or educational institution will be exempt from tax by that other Contracting State for a period not exceeding two years from the date of his arrival in that other Contracting State.

Since a temporary visit may be of such a duration that an individual may lose his status as a resident of the Contracting State of which he was a resident at the time he became eligible for the benefits of this Article, the individual need only be a resident of such Contracting State at the beginning of his visit. However, if the individual becomes a citizen of, or acquires immigrant status in, the other Contracting State, that other Contracting State may tax the individual without regard to this Article. See paragraphs (3) and (4)(b) of Article 6 (General Rules of Taxation). If the individual's visit exceeds a period of two years from the date of his arrival, the exemption applies only to the income received by the individual before the expiration of such two-year period.

Pursuant to paragraph (2), this Article does not apply to income from research undertaken not in the public interest but primarily for the private benefit of a specific person or persons other than the person performing the research.

ARTICLE 23
Students and Trainees

Paragraph (1) provides that an individual who is a resident of one Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present therein for the primary purpose of studying at a university or other recognized educational institution, securing training required to qualify him to practice a profession or professional specialty, or studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational organization, will be exempt from tax by that other Contracting State for a period not exceeding five taxable years from the date of his arrival in that other Contracting State and for such additional period of time as is necessary to complete, as a full-time student, the educational requirements as a candidate for a postgraduate or professional degree from a recognized educational institution on:

- (1) gifts from abroad for the purpose of his maintenance, education, study, research, or training;
- (2) the grant, allowance, or award; and
- (3) income from personal services performed in the other Contracting State not in excess of \$3,000 or its equivalent in Egyptian pounds for any taxable year.

Under paragraph (2), an individual who is a resident of one Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present therein as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of acquiring technical, professional, or business experience from a person other than that resident of the first-mentioned Contracting State or other than a person related to such resident, or studying at a university or other recognized educational institution in that other Contracting State, will be exempt from tax by that other Contracting State for a period not exceeding twelve consecutive months, on income from personal services not in excess of \$7,500 or its equivalent in Egyptian pounds.

Under paragraph (3), an individual who is a resident of one Contracting State at the time he becomes temporarily present in the other Contracting State and who is temporarily present therein for a period not exceeding one year, as a participant in a program sponsored by the other Contracting State, for the primary purpose of training, research, or study, will be exempt from tax by the other Contracting State with respect to his income from personal services in respect of such training, research, or study performed in that other Contracting State in an aggregate amount not in excess of \$10,000 or its equivalent in Egyptian pounds.

The monetary limits provided in paragraphs (1), (2), or (3) are in addition to, and not in lieu of, other exemptions provided by the Code. Thus, an unmarried resident of Egypt who is temporarily present in the United States for the primary purpose of studying at a university would be entitled to exclude \$3,000 of income from the performance of personal services and, in addition, would be entitled to the personal exemption allowed by section 151 of the Code, as provided in section 873(b) of the Code.

The first sentence of paragraph (4) provides that the benefits provided in paragraph (1) and the benefits provided under Article 22 (Teachers), when taken together, may extend only for such period of time, not to exceed five taxable years from the date of individual's arrival, as may reasonably or customarily be required to effectuate the purpose of the visit, and for such additional period of time as is specified in paragraph (1). The second sentence of paragraph (4) makes it clear that the benefits provided by Article 22 will not be available to an individual if, during the immediately preceding period, the individual enjoyed the benefits provided by paragraph (1). Thus, an Egyptian individual who originally entered the United States for the purpose of becoming a student and received benefits under paragraph (1) must leave the United States and, if necessary, reestablish residence in Egypt, and then return at the invitation of the United States, a political subdivision or local authority thereof, or a university or other recognized educational institution for the primary purpose of becoming a teacher in order to take advantage of Article 22.

If an individual qualifies for the benefits of more than one of the provisions of Article 22 (Teachers) and this Article, such individual may choose the most favorable provision, but may not claim the benefits of more than one provision in any taxable year as a means of avoiding the limitations provided. Thus, for example, an individual who comes to the other Contracting State for the primary purpose of studying may be able to qualify under either paragraphs (2) or (3) of this Article. However, he cannot combine the maximum exclusion limits in those two paragraphs

to exclude \$17,500 during the taxable year. If the individual becomes a citizen of, or acquires immigrant status in, the other Contracting State, that other Contracting State may tax the individual without regard to this Article. See paragraphs (3) and (4)(b) of Article 6 (General Rules of Taxation).

ARTICLE 24 Investment or Holding Companies

The Article provides that a corporation of one Contracting State deriving dividends, interest, royalties or capital gains from sources within the other Contracting State will not be entitled to the benefits of Articles 11 (Dividends), 12 (Interest), 13 (Royalties) or 14 (Capital Gains) if, by reason of special measures, the tax imposed on such corporation by the first-mentioned Contracting State with respect to such dividends, interest, royalties or capital gains is substantially less than the tax generally imposed by such Contracting State on corporate profits, and twenty-five percent or more of the capital of such corporation is held of record or is otherwise determined, after consultation between the competent authorities of the Contracting States, to be owned, directly or indirectly, by one or more persons who are not individual residents of the first-mentioned Contracting State (or, in the case of an Egyptian corporation, who are citizens of the United States). For purposes of applying this Article, it is intended that the requisite direct or indirect ownership be tested at the individual shareholder level. Existing Code provisions dealing with the taxation of capital gains do not make this Article applicable with respect to capital gains.

The purpose of this Article is to deal with potential abuse which could occur if one of the Contracting States provided preferential rates of tax for investment or holding companies. In the absence of this Article, residents of third countries could organize a corporation in the Contracting State extending the preferential rates for the purpose of making investments in the other Contracting State. The combination of low tax rates in the first-mentioned Contracting State and the reduced rates or exemptions in the other Contracting State would enable the third country residents to realize unintended benefits.

ARTICLE 25 Relief from Double Taxation

In order to avoid double taxation, each Contracting State agrees in this Article to provide to its citizens or residents a credit against its taxes for taxes paid by such persons to the other Contracting State.

In paragraph (1), the United States agrees to allow a United States citizen or resident as a credit against United States tax an appropriate amount of taxes paid or accrued to Egypt in accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle of paragraph (1)). In addition, in the case of a United States corporation owning at least ten percent of the voting stock of an Egyptian corporation from which it receives dividends in any taxable year, the United

States will allow a credit for the appropriate amount of taxes paid or accrued to Egypt by the Egyptian corporation paying such dividends with respect to the profits out of which such dividends are paid. The appropriate amount will be based upon the amount of tax paid or accrued to Egypt, but the credit is not to exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources within Egypt or on income from sources outside the United States) provided by United States law for the taxable year. This provision does not require the United States to maintain a per-country or overall limitation in the future so long as the general principle of a foreign tax credit remains in effect. For the purpose of applying the United States credit in relation to taxes paid or accrued to Egypt, the rules set forth in Article 4 (Source of Income) will be applied to determine the source of income, and the taxes referred to in paragraphs (1)(b) and (2) of Article 1 (Taxes Covered) will be considered to be income taxes. Whether Egyptian taxes are paid or accrued is determined under the rules of the Code. A taxpayer may, for any year, claim a foreign tax credit under the rules of the Code. In that case, he would forego the rules of the Convention that guarantee income tax status for the specified Egyptian taxes.

Under paragraph (2), Egypt will allow a resident of Egypt as a credit against Egyptian tax the appropriate amount of income taxes paid or accrued to the United States and, in the case of an Egyptian corporation owning at least ten percent of the voting stock of a United States corporation from which it receives dividends in any taxable year, will also allow credit for the appropriate amount of taxes paid or accrued to the United States by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. The appropriate amount will be based upon the amount of tax paid or accrued to the United States but will not exceed that portion of Egyptian tax which such resident's net income from sources within the United States bears to his entire net income for the same taxable year. For the purpose of applying the Egyptian credit in relation to taxes paid or accrued to the United States, the rules set forth in Article 4 (Source of Income) will be applied to determine the source of income.

Paragraph (4) of Article 6 (General Rules of Taxation) provides that the saving clause in paragraph (3) of that Article does not affect the benefits conferred under this Article. Thus, the provisions of this Article may be relied upon by a citizen or resident of a Contracting State.

ARTICLE 26 Nondiscrimination

Paragraph (1) provides that a citizen of one Contracting State who is a resident of the other Contracting State will not be subject in that other Contracting State to more burdensome taxes than a citizen of that other Contracting State who is a resident thereof. The determination of whether there is more burdensome taxation is to be made by comparing the treatment of individuals who are in comparable positions. Thus, for example, a citizen of Egypt who is a resident of the United States and who otherwise meets the requirements specified in section 911 of the Code would, under this Article, be eligible for the benefits of section 911 even though not a citizen of the United States.

Paragraph (2) provides that a permanent establishment which a resident of one

Contracting State has in the other Contracting State will not be subject in that other Contracting State to more burdensome taxes than a resident of that other Contracting State carrying on the same activities, However, as noted in paragraph (2)(a), this does not obligate a Contracting State to grant to individual residents of the other Contracting State any personal allowances, reliefs, or deductions for 'taxation purposes on account of civil status or family responsibilities which it grants its own individual residents.

Under paragraph (2)(b) Egypt is not obliged to grant United States corporations the exemptions granted Egyptian corporations under Articles 5 and 6 of Law No. 14 of 1939. Article 5 of that law exempts from Egyptian tax certain foreign source investment income which an Egyptian insurance company earns on reserves which are required under foreign law to be deposited in a foreign country. Article 6 of that law exempts certain distributions to shareholders of Egyptian investment companies, where the investment company has paid tax on its dividend and interest income.

Paragraph (2)(c) preserves the rules of the first and second paragraphs of Article 11 and Article 11 bis of Law No.14 of 1939. Under these provisions of Egyptian law, the Egyptian branch profits of a foreign corporation are deemed to be distributed and are treated as dividends. Thus, a branch of a foreign corporation is subject to tax on deemed distribution, while an Egyptian corporation is not, because the actual tax on the Egyptian corporation's dividends falls on the recipient and not on the paying corporation. Paragraphs (5) and (6) of Article 11 (Dividends) provide for this treatment. Paragraph (2)(c) of this Article confirms that this treatment will not be considered discriminatory.

Paragraph (3) prohibits one Contracting State from subjecting a corporation of such Contracting State, the capital of which is wholly or partly owned, directly or indirectly, by one or more residents of the other Contracting State to any taxation or any requirement connected with taxation which is other or more burdensome than those applicable to corporations of the first-mentioned Contracting State carrying on the same activities, the capital of which is wholly or partly owned or controlled by one or more residents of the first-mentioned Contracting State.

The provisions of this Article do not override the right of the United States to impose the tax provided in Code section 897 (relating to gains derived by nonresident aliens or foreign corporations from U.S. real property interests).

Under paragraph (3) of Article 1 (Taxes Covered), the provisions of this Article extend to all taxes of every kind imposed at the national, state or local level.

The saving clause in paragraph (3) of Article 6 (General Rules of Taxation) does not apply to this Article. Thus, a Contracting State may not deny any rights conferred by this Article to its citizens and residents.

ARTICLE 27
Mutual Agreement Procedure

Under paragraph (1), when a resident or citizen of one Contracting State considers that action of one or both Contracting States results or will result for him in taxation not in accordance with the Convention, he may, notwithstanding the remedies provided by the national laws of the Contracting States, present his case to the competent authority of the Contracting State of which he is a resident or citizen. A resident or citizen of a Contracting State need not, although it is anticipated that in the normal situation he will, exhaust his other administrative or judicial remedies prior to resorting to the use of the mutual agreement procedure. If the claim is considered to have merit by the competent authority, that competent authority will endeavor to come to an agreement with the competent authority of the other Contracting State with a view to the avoidance of taxation not in accordance with the Convention.

Paragraph (2) requires the competent authorities of the two Contracting States to endeavor to resolve by mutual agreement any difficulties or doubts arising as to the application of the Convention. In particular, the competent authorities may agree to the same attribution of industrial or commercial profits to a resident of one Contracting State and its permanent establishment situated in the other Contracting State; the same allocation of income, deductions, credits, or allowances between a resident of one Contracting State and a related Person and to the readjustment of taxes imposed by each Contracting State to reflect such allocation; the same determination of the source of particular items of income; and the same characterization of particular items of income; The list of subjects of potential mutual agreement in paragraph (2) is not exhaustive; it merely illustrates the principles set forth in the paragraph.

Under paragraph (3), in implementing the provisions of this Article, the competent authorities may communicate with each other directly and, when advisable, meet together for an oral exchange of opinions.

Under paragraph (4), in cases in which the competent authorities reach an agreement, taxes will be imposed on such income, and refund or credit of taxes allowed, by the Contracting States in accordance with such agreement. This permits the issuance of a refund or credit notwithstanding procedural barriers otherwise existing under a Contracting State's law, such as the statute of limitations. However, it does not authorize imposition of additional taxes after the statute of limitations has run.

ARTICLE 28 Exchange of Information

Paragraph (1) provides for a system of administrative cooperation between the competent authorities of the two Contracting States by requiring an exchange of information necessary for the carrying out of the Convention and of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is in accordance with the Convention. Under paragraph (3) of Article 1 (Taxes Covered), the provisions of this Article extend to all taxes of every kind imposed at the national level. The competent authorities may exchange information in connection with tax compliance generally, not merely illegal acts or crimes. Information need be exchanged, however, only if it is of a class that can be obtained under the laws and administrative practices of each Contracting State with respect to its own

taxes.

Paragraph (2) provides that information exchanged must be treated as secret. However, such information may be disclosed to any persons or authorities concerned with or made part of the public record with respect to the assessment, collection, or enforcement of, or litigation with respect to, the taxes which are the subject of the Convention. Thus, disclosure is not prohibited as a part of a public proceeding before a court or an administrative body.

Paragraph (3) provides that no information may be exchanged which would be contrary to the public policy.

Paragraph (4) provides that depositions of witnesses and copies of unedited original documents (including books, papers, statements, records, accounts, or writings) shall be provided by the competent authority of a Contracting State, if specifically requested by the competent authority of the other Contracting State, to the extent such depositions and documents can be obtained under the laws and administrative practices of each Contracting State with respect to its own taxes.

Paragraph (5) provides that any depositions and evidence which may be furnished in accordance with this Article should not be withheld by reason of any doctrine of law under which international judicial assistance is not accorded in tax matters.

Paragraph (6) provides that the exchange of information may be on either a routine basis or on request with reference to particular cases, and that the competent authorities may agree on the list of information to be furnished on a routine basis.

In making the determinations necessary under paragraphs (1) and (4) of this Article, a Contracting State will use the standards it uses in the enforcement of its own laws by its administrative and judicial authorities, treating the tax of the Contracting State with respect to which a request relates as if it were a tax of the Contracting State requested to furnish the information and were being imposed by such Contracting State.

ARTICLE 29 Assistance in Collection

Paragraph (1) provides that one Contracting State will give the other Contracting State limited assistance in collecting its taxes. Thus, each Contracting State is required to collect on behalf of the other Contracting State only those taxes imposed by such other Contracting State as will ensure that any exemption or reduced rate of tax granted under this Convention by such other Contracting State is not enjoyed by persons not entitled to such benefits.

Paragraph (2) makes clear that a Contracting State is not obligated to carry out measures at variance with the laws or the administrative practice of either Contracting State with respect to the collection of its own taxes.

ARTICLE 30
Diplomatic and Consular Officers

This Article provides that nothing in the Convention will affect the fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 31
Entry into Force

This Article provides that the Convention is subject to ratification and provides for the exchange of instruments of ratification. The Convention will enter into force thirty days after the date of exchange of such instruments of ratification. The Convention shall first have effect as respects the rate of withholding tax, to amounts paid on or after the first day of the second month following the date on which the Convention enters into force, and, as respects other taxes, to taxable years beginning on or after January 1 of the year following the date on which the Convention enters into force.

ARTICLE 32
Termination

Paragraph (1) provides that the Convention will continue in force indefinitely, but that it may be terminated by either Contracting State at any time after five years from the date it enters into force. A Contracting State seeking to terminate the Convention must give at least six months' notice through diplomatic channels. If the Convention is terminated, such termination will be effective with respect to income of calendar years or taxable years beginning (or, in the cases of taxes payable at source, payments made) on or after January 1 next following the expiration of the six month period. It is intended that the reference to calendar years applies only to cases where the taxable year is the calendar year.

Under paragraph (2), the provisions of Article 20 (Social Security Payments) may be terminated by either Contracting State at any time after the Convention enters into force by prior notice given through diplomatic channels.