

July 14, 2004

Excellency:

I have the honor to refer to the Second Protocol Amending the Convention Between the United States of America and Barbados for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income Signed on December 31, 1984, which was signed today and inform you on behalf of the Government of the United States of America of the following:

During negotiations leading to the conclusion of the Protocol signed today, the negotiators developed agreed Understandings that are attached to this note. The Understandings are intended to give guidance both to

His Excellency

Michael Ian King,

Ambassador of Barbados.

taxpayers and tax authorities of our two countries in interpreting Article 22 (Limitation on Benefits).

If the attached Understandings are acceptable to the Government of Barbados, this note and your note in reply thereto will indicate that our two Governments share a common understanding in this matter.

Accept, Excellency, the expression of my highest consideration.

For the Secretary of State:

Attachment:

As stated.

July 14, 2004

The Secretary of State  
U.S. Department of State  
2201 C Street, N.W.  
Washington, D.C. 20520

Excellency:

I have the honour to confirm receipt of your Note of today's date which reads as follows:

"DEPARTMENT OF STATE  
WASHINGTON

July 14, 2004

Excellency:

I have the honor to refer to the Second Protocol Amending the Convention Between the United States of America and Barbados for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income Signed on December 31, 1984, which was signed today and inform you on behalf of the Government of the United States of America of the following:

During negotiations leading to the conclusion of the Protocol signed today, the negotiators developed agreed Understandings that are attached to this note. The Understandings are intended to give guidance both to taxpayers and tax authorities of our two countries in interpreting Article 22 (Limitation on Benefits).

If the attached Understandings are acceptable to the Government of Barbados, this note and your note in reply thereto will indicate that our two Governments share a common understanding in this matter.

Accept, Excellency, the expression of my highest consideration.

For the Secretary of State:

Attachment:

As stated."

I have the honour to inform you that my Government agrees to the above.

Accept, Excellency, the assurances of my highest consideration.

***Michael I. King***  
Ambassador.

**UNDERSTANDINGS REGARDING THE LIMITATIONS ON BENEFITS  
ARTICLE IN THE U.S.-BARBADOS PROTOCOL**

1. The Protocol, signed December 18, 1991, Amending the Convention Between the United States of America and Barbados for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income Signed on December 31, 1984, was accompanied by Understandings Regarding the Scope of the Limitation on Benefits Article in the U.S.-Barbados Protocol. Those Understandings continue to apply for purposes of applying Article 22 (Limitation on Benefits) of the Convention, as amended by this Protocol, except to the extent the Understandings are inconsistent with the provisions of Article 22.

2. Paragraph 3 of Article 22 provides that a person that is not entitled to the benefits of this Convention pursuant to the provisions of paragraph 1 of Article 22 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines. In making determinations under paragraph 3 of Article 22, it is understood that the Competent Authority will take into account all of the relevant facts and circumstances. In the case of an organization that fails to satisfy the requirements of paragraph 1(f) of Article 22 solely because 50 percent or less of its beneficiaries, members or participants are persons entitled to the benefits of this Convention, the U.S. Competent Authority will favorably consider the following factors:

(a) the organization is established in Barbados;

(b) the sponsoring employer of the organization is a resident of Barbados entitled to the benefits of the Convention (other than a person described in paragraph 6 of Article 22);

(c) more than 30 percent of the beneficiaries, members or participants of the organization are persons entitled to the benefits of this Convention;  
and

(d) more than 70 percent of the beneficiaries, members or participants of the organization are individuals resident in a member of the Caribbean Community.

3. For purposes of paragraph 6 of Article 22, a “special tax regime” shall mean:

(a) in the case of Barbados:

(1) the Exempt Insurance Act, Cap. 308;

(2) the International Financial Services Act, 2002;

(3) the International Business Companies Act, Cap. 77;

(4) the Societies with Restricted Liability Act, Cap. 318B; or

(5) the Insurance (Miscellaneous Provisions) Act, 1998; or

(b) in the case of either Contracting State, any legislation or administrative practice enacted or adopted after the signing of this Protocol pursuant to which the income of a person is entitled to the same or substantially similar tax benefits to those granted under the legislation referred to in paragraph (a).