TREASURY DEPARTMENT
TECHNICAL EXPLANATION OF THE AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF TURKEY FOR THE
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION
OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME
SIGNED AT WASHINGTON ON MARCH 28, 1996

INTRODUCTION

This document is a technical explanation of the Agreement between the United States and Turkey and the accompanying Protocol, which were signed on March 28, 1996 (the "Convention" or the "Agreement"). Although, at the request of Turkey, the term "agreement" is used throughout the Agreement and Protocol, it is not intended to have a meaning different from the term "Convention" that is used in most U.S. income tax treaties. In this Technical Explanation, the term "Convention" will generally be used. References in this Explanation to the "OECD Model" are to the Model Tax Convention on Income and on Capital, published by the OECD in 1992, as subsequently amended. References to the "U.N. Model" are to the United Nations Model Double Taxation Convention between Developed and Developing Countries, published in 1980.

The Technical Explanation is an official guide to the Convention. It reflects the policies behind particular Convention provisions, as well as understandings reached with respect to the application and interpretation of the Convention.

The Convention is accompanied by a Protocol pertaining to particular Articles of the Convention. These Protocol provisions are discussed in the explanations of the relevant articles.

Article 1. PERSONAL SCOPE

Paragraph 1

Paragraph 1 provides that the Convention is applicable to residents of the United States or Turkey, except where the terms of the Convention provide otherwise. Under Article 4 (Resident) a person generally is treated as a resident of a Contracting State if that person is, under the laws of that State, liable to tax therein by reason of his domicile, residence or other similar criteria. If a person is, under these criteria, a resident of both Contracting States, a single State of residence is assigned under Article 4. The Article 4 definition of residence applies for all provisions of the Convention.

Certain provisions of the Convention are applicable to persons who may not be residents of either Contracting State. For example, paragraph 1 of Article 24 (Non-Discrimination) applies to nationals of the Contracting States, even if they are residents of a third state. Under Article 26 (Exchange of Information) information may be exchanged with respect to residents of third states.

Paragraph 2

Paragraph 2 of Article 1 describes the relationship between the rules of the Convention, on the one hand, and the laws of the Contracting States and other agreements between the Contracting States, on the other. Subparagraph 2 a) makes explicit the generally accepted principle that no provision in the Convention may restrict any exclusion, exemption, deduction, credit or other allowance accorded by the laws of the Contracting States. For example, if a deduction would be allowed under the Internal Revenue Code (the "Code") in computing the taxable income of a resident of Turkey, the deduction will be available to that person in computing income under the Convention. In no event may the application of the Convention increase the tax burden on a resident of a Contracting State beyond that permitted under the State's internal law. Thus, a right to tax given by the Convention cannot be exercised by the United States unless that right also exists under the Code. For example, the taxation of certain interest allowable under Article 11 (Interest)) cannot be exercised because of the Code exemption in sections 871(h) and 881(c).

While a taxpayer may generally rely on more favorable treatment afforded under the Code, a taxpayer may not pick and choose among Code and Convention provisions in an inconsistent manner in order to minimize tax. For example, assume a resident of Turkey has three separate businesses in the United States. One is a profitable permanent establishment. The other two are trades or businesses that would earn income taxable in the United States under the Code but that do not meet the permanent establishment threshold tests of the Convention; one is profitable and the other incurs a loss. Under the Convention, the income of the permanent establishment is taxable, and both the profit and the loss of the other two businesses are ignored. Under the Code, all three would be taxable. The loss would be offset against the profits of the two profitable ventures. The taxpayer may not invoke the Convention to exclude the profits of the profitable trade or business and invoke the Code to offset the loss of the loss trade or business against the profit of the permanent establishment. (See Rev. Rul. 84-17, 1984-1 C.B. 308.) The taxpayer may invoke the Code to subject all three ventures to U.S. tax. A taxpayer that does so would not be precluded from invoking the Convention with respect to, for example, any dividend income received from the United States that is not effectively connected with any of its business activities in the United States.

Under subparagraph 2 b), the Convention may not be used to deny or restrict any benefit granted by any other agreement between the United States and Turkey. For example, if a consular convention affords certain protections not found in the Convention, those protections will be available to residents of the Contracting States regardless of any provisions to the contrary (or silence) in the Convention.

Paragraph 3

Paragraph 3 contains the traditional "saving clause," and paragraph 4 contains exceptions to that clause. Under the saving clause, the Contracting States reciprocally reserve their right to tax their residents, and the United States reserves its right to tax its citizens and certain former citizens, notwithstanding any Convention provision to the contrary. The concept of "resi-

dence" for purposes of the saving clause is determined under Article 4 (Resident). Thus, for example, if an individual who is not a U.S. citizen is a resident of the United States under the Code (e.g., a "green card" holder), and is also a resident of Turkey under Turkish law, and if that individual has a permanent home available to him in Turkey and not in the United States, he would be treated as a resident of Turkey under the tie-breaker rules of paragraph 2 of Article 4. This result would apply for purposes of the saving clause, and the United States therefore would not be permitted to apply its statutory rules to that person if those rules are inconsistent with the Convention.

The following example illustrates the operation of the saving clause. If a Turkish resident (as defined in Article 4) performs independent personal services in the United States, the individual is present in the United States for a period of no more than 183 days in a continuous 12 month period, and the income from the services is not attributable to a fixed base in the United States, Article 14 (Independent Personal Services) would normally prevent the United States from taxing the income. If, however, the Turkish resident is also a citizen of the United States, the saving clause permits the United States to include the remuneration in the worldwide income of the citizen and subject it to tax under the normal Code rules.

Under paragraph 3, the United States also reserves its right to tax former U.S. citizens whose loss of citizenship had as one of its principal purposes the avoidance of U.S. tax. Such a former citizen is taxable in accordance with the provisions of section 877 of the Code for 10 years following the loss of citizenship.

Paragraph 4

Paragraph 4 sets forth exceptions to the saving clause in cases where its application would undermine Convention benefits that are intended to be available to residents of a Contracting State and to citizens of the United States. Under subparagraph a), for example, U.S. residents and citizens are entitled to certain U.S. benefits provided under the Convention. Those benefits are: (1) Paragraph 2 of Article 9 (Associated Enterpris-

es), which grants the right to a correlative adjustment and, in particular, consistent with the provisions of Article 25 (Mutual Agreement Procedure), permits the override of the statute of limitations for the purpose of refunding tax under such a correlative adjustment; (2) Paragraph 2 of Article 18 (Pensions and Annuities), which calls for exclusive source State taxation of social security benefits; (3) Article 23 (Relief from Double Taxation), which confers the benefit of double taxation relief by a Contracting State on its citizens and residents (to apply the saving clause to this Article would render the Article meaningless); (4) Article 24 (Non-Discrimination), which prevents a Contracting State from denying certain deductions to its residents or from applying other or more burdensome tax treatment to its enterprises that are owned by residents of the other State than it applies to other similar enterprises; and (5) Article 25 (Mutual Agreement Procedure), which may confer benefits, such as a waiver of the statute of limitations on refunds, by a State with respect to its citizens and residents.

Subparagraph 4 b) provides a different set of exceptions to the saving clause for certain benefits available to persons who are neither citizens nor lawful permanent residents (e.g., U.S. "green card" holders) of a Contracting State but who remain in that State long enough to become residents under its law. The benefits preserved by this subparagraph are the host country exemptions for the following items of income: government service salaries and pensions under Article 19 (Government Service); certain income of students, apprentices and teachers under Article 21 (Students, Apprentices, and Teachers); and the income of diplomatic and consular officers under Article 27 (Members of Diplomatic Missions and Consular Posts).

Paragraph 5

Paragraph 5 of Article 1 specifically relates to nondiscrimination obligations of the Contracting States under other agreements. The provisions of paragraph 5 are an exception to the rule provided in paragraph 2 b) of this Article under which the Convention shall not restrict in any manner any exclusion,

exemption, deduction, credit, or other allowance now or hereafter accorded by any other agreement between the Contracting States.

Subparagraph a) of paragraph 5 provides that, notwithstanding any other agreement to which the Contracting States may be parties, a dispute concerning whether a measure is within the scope of this Convention shall be considered only by the competent authorities of the Contracting States, and the procedures under this Convention exclusively shall apply to the dispute. Thus, procedures for dealing with disputes that may be incorporated into trade, investment, or other agreements between the Contracting States shall not apply for the purpose of determining the scope of the Convention.

Subparagraph b) of paragraph 5 provides that, unless the competent authorities determine that a taxation measure is not within the scope of this Convention, the nondiscrimination obligations of this Convention exclusively shall apply with respect to that measure, except for such national treatment or most-favored-nation ("MFN") obligations as may apply to trade in goods under the General Agreement on Tariffs and Trade ("GATT"). No national treatment or MFN obligation under any other agreement shall apply with respect to that measure. Thus, unless the competent authorities agree otherwise, any national treatment and MFN obligations undertaken by the Contracting States under agreements other than the Convention shall not apply to a taxation measure, with the exception of GATT as applicable to trade in goods.

Subparagraph c) of paragraph 5 defines a "measure" broadly. It would include, for example, a law, regulation, rule, procedure, decision, administrative action, or any other similar provision or action.

Article 2. TAXES COVERED

This Article identifies the U.S. and Turkish taxes to which the Convention applies.

Paragraphs 1 and 2

Paragraph 1, based on the comparable paragraph in the OECD Model, states that the Convention applies to income taxes imposed on behalf of the Contracting States (i.e., not including state and local taxes). Paragraph 2 lists the specific taxes that are covered. The statement in paragraph 1 of the general rule that the Convention applies to income taxes does not expand the coverage beyond those taxes specified in paragraph 2 or referred to in paragraph 3.

Subparagraph 2 a) specifies the existing Turkish taxes to which the Convention applies. These are: (i) the income tax (Gelir Vergisi), (ii) the corporation tax (Kurumlar Vergisi), and (iii) the levy imposed on the income tax and the corporation tax. The latter tax is a surtax based on the income taxes specified in clauses (i) and (ii) of subparagraph 2 a). The Turkish covered taxes are referred to in the Convention as "Turkish Tax."

The covered taxes of the United States are specified in subparagraph 2 b). They are the Federal income taxes imposed by the Code (excluding the accumulated earnings tax and the personal holding company tax, which are considered penalty taxes), and the excise taxes imposed with respect to private foundations (see Chapter 42 of subtitle D of the Code). The Convention does not apply (except in the case of Articles 24 (Non-Discrimination) and 26 (Exchange of Information)) with respect to the excise taxes imposed on insurance premiums paid on policies issued by foreign insurers under Code section 4371. In general, the Convention also does not apply to social security taxes (Code sections 1401, 3101, 3111 and 3301). There is no Social Security Totalization Agreement between the United States and Turkey. The United States covered taxes are referred to in the Convention as "United States Tax."

Except with respect to Article 24 (Non-Discrimination), state and local taxes are not covered by the Convention. Article 24 prohibits discriminatory taxation with respect to all taxes, whether or not they are covered taxes under Article 2, and whether they are imposed by the Contracting States, their political subdivisions or local authorities. The information exchange

provisions of Article 26 (Exchange of Information) apply to all national level taxes, including excise taxes and other taxes imposed by either Contracting State, whether or not specified in paragraph 2, to the extent that the information exchanged is relevant to enforcement of the Convention or of any such national-level tax that is applied in a manner consistent with the Convention.

Paragraph 3

Under paragraph 3, the Convention will apply to any taxes enacted after March 28, 1996 (the date of signature of the Convention) that are identical or substantially similar to the existing taxes enumerated in paragraph 2 and that are imposed in addition to, or in place of, the existing taxes. The paragraph further provides that the U.S. and Turkish competent authorities will notify each other of significant changes in their taxation laws. This requirement refers to changes that are of significance to the operation of the Convention.

Article 3. GENERAL DEFINITIONS

Paragraph 1

Paragraph 1 of Article 3 defines a number of basic terms used in the Convention. Certain other terms are defined in other articles of the Convention. For example, the term "resident of a Contracting State" is defined in Article 4 (Resident). The term "permanent establishment" is defined in Article 5 (Permanent Establishment). The terms "dividends," "interest" and "royalties" are defined in Articles 10, 11 and 12, respectively, which deal with the taxation of those classes of income. Terms that are not defined in the Convention are dealt with in paragraph 2.

The terms "Turkey" and "United States" are defined in subparagraphs 1 a) (i) and (ii), respectively. The term "Turkey" means the territory of the Republic of Turkey and includes the continental shelf over which Turkey has sovereign rights, consistent with international law, with respect to the exploration or exploitation of natural resources. The term "United States" is

defined to mean the United States of America, not including Puerto Rico, the Virgin Islands, Guam or any other U.S. possession or territory. When used in a geographic sense, the term includes the states and District of Columbia and, consistent with international law, the U.S. continental shelf (with respect to the exploration or exploitation of natural resources). The continental shelves of the Contracting States are included within their definitions only to the extent that the application of the Convention to the continental shelf is consistent with international law and is connected with the exploration or exploitation of the natural resources of the shelf.

The terms "a Contracting State" and "the other Contracting State" are defined in subparagraph 1 b) to mean Turkey or the United States, according to the context in which the term is used.

Subparagraph 1 c) defines the term "person" to include an individual, a company and any other body of persons. Although not specifically listed in the definition, by virtue of the use of the phrase "any other body of persons," the term is also understood to include a partnership, estate or trust. The term "person" is significant because, as specified in Article 1 (Personal Scope), the Convention applies to persons who are residents of a Contracting State.

The term "company" is defined in subparagraph 1 d) as a body corporate or any entity treated as a body corporate for tax purposes. In the United States, the rules of Treas. Reg. § 301.7701-2 generally apply to determine whether an entity is taxed as a body corporate.

Paragraph 1, in subparagraph e), clarifies for each Contracting State how a "place of incorporation" is determined. Under the Turkish Code of Commerce, a company's place of incorporation is where its legal head office is registered. Under U.S. law, a company's place of incorporation is where it is organized, created or incorporated. The term "place of incorporation" is used in Article 4 (Resident) both as a criterion for residence in a Contracting State and as the tie-breaker rule for the residence of an otherwise dual-resident corporation.

The term "national," as applied to Turkey and the United States, is defined in subparagraphs f)(i) and (ii), respectively. A national of Turkey is either an individual who has Turkish nationality in accordance with the Turkish Nationality Code, or a legal person, partnership or association deriving its legal status as such an organization from Turkish law. A national of the United States is either a citizen of the United States or a company, association or other entity that derives its status as such from United States law or from the laws of any United States political subdivision. This term is relevant, in particular, to paragraph 2 of Article 4 (Resident), Articles 19 (Government Service,) 24 (Non-Discrimination), and 25 (Mutual Agreement Procedure).

The terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" are defined in subparagraph 1 g) as an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State, respectively. The term "enterprise" is not defined in the Convention.

Subparagraphs 1 h) (i) and (ii) define the term "competent authority" for Turkey and the United States, respectively. The competent authority of Turkey is the Minister of Finance or his authorized representative. The U.S. competent authority is the Secretary of the Treasury or his delegate. The Secretary of the Treasury has delegated the competent authority function to the Commissioner of Internal Revenue, who has, in turn, redelegated the authority to the Assistant Commissioner (International). With respect to interpretative issues, the Assistant Commissioner acts with the concurrence of the Associate Chief Counsel (International) of the Internal Revenue Service.

Subparagraph 1 i) defines the term "international traffic." This definition is significant principally in relation to Article 8 (Shipping and Air Transport), but also is relevant to Article 15 (Dependent Personal Services). The term means any transport by a ship or aircraft operated by an enterprise of a Contracting State except when the vessel is operating solely between places within the other Contracting State. The exclusion from international traffic of transport solely between places within a

Contracting State means, for example, that carriage of goods or passengers between New York and Chicago by a Turkish carrier (if that were permitted) would not be treated as international traffic. The resulting income, therefore, would not be exempt from U.S. tax under Article 8. Instead, it would be treated as business profits and, under Article 7 (Business Profits) would be taxable in the United States on a net basis if attributable to a U.S. permanent establishment. If, however, goods or passengers are carried by a Turkish carrier from Istanbul to New York, and some of the goods or passengers are carried only to New York, while the rest are taken to Philadelphia, the entire transport, including the New York-to-Philadelphia portion, would be international traffic.

Paragraph 2

Paragraph 2 establishes a procedure for determining a definition of a term, for purposes of the Convention, that is not otherwise defined in the Convention. The paragraph provides the general rule that any such term will have the meaning that it has under the taxation law of the Contracting State whose tax is being applied. If a term is defined under that Contracting State's tax law and under a non-tax law (e.g., a property law), the tax law definition would be used in applying the Convention. A meaning other than this statutory meaning may be used, however, if the context so requires, or if the competent authorities, pursuant to the authority granted to them in paragraph 3 of Article 25 (Mutual Agreement Procedure), so agree. If, for example, the meaning of a term cannot be readily determined under the law of a Contracting State, or if there is a conflict in meaning under the laws of the two States that creates problems in the application of the Convention, the competent authorities may establish a common meaning in order to prevent double taxation or to further any other purpose of the Convention. This common meaning need not conform to the meaning of the term under the laws of either Contracting State.

Article 4 - RESIDENT

Article 4 sets forth rules for determining whether a person is a resident of the United States or Turkey for purposes of the Convention. As a general matter only residents of the Contracting States may claim the benefits of the Convention. The definition of resident in the Convention is to be used only for purposes of the Convention.

Paragraph 1

Paragraph 1 defines the term "resident of a Contracting State" for all purposes of the Convention. In general, this definition incorporates the definitions of residence in U.S. and Turkish law. A resident of a Contracting State is a person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature. For this purpose, "liable to tax in" is interpreted as "subject to the taxation laws of." Thus, a non-profit, tax-exempt entity may be a resident of its state of organization because it is subject to the taxation laws of that state, even though it may be exempt from taxation in that state. A person who, under the general rule of paragraph 1, is a resident of one State and not of the other will be treated for purposes of the Convention as a resident of the first-mentioned State (subject to an exception described below).

In the case of the United States, residents include U.S. citizens as well as aliens who are considered U.S. residents under Code section 7701(b). Although "citizenship" is not included among the explicit criteria of residence in the Convention, it is understood to be a "criterion of a similar nature" under paragraph 1. Thus, a U.S. citizen who resides outside the United States may be a resident of the United States within the meaning of Article 4 and therefore entitled to treaty benefits from Turkey because, as a U.S. citizen, he is liable to U.S. tax on his worldwide income. Under Point I of the Protocol, however, U.S. citizenship may not automatically render a person a resident of the United States for purposes of the Convention. Under this Protocol provision, a citizen of the United States who has a closer economic nexus to another country than to the United States will be treated for purposes of the Convention as a

resident of that other country, and not of the United States. The relative economic nexus is determined by applying the principles of the tie-breaker rules of paragraph 2 of the Article to the U.S. citizen.

Paragraph 1 also makes clear that a partnership or similar pass-through entity, an estate or a trust may be treated as a resident of a Contracting State for purposes of the Convention, but only to the extent that the income derived by such entity is subject to tax in that State as the income of a resident, either in the hands of the entity or in the hands of its partners, members, grantors or beneficiaries. The phrase "similar pass-through entity" may include, in general, any entity that is classified as a partnership for tax purposes under the rules of Code section 7701 (as from time to time amended). Thus, for example, Turkish source income received by a U.S. limited liability company ("LLC") classified as a partnership for U.S. tax purposes will generally be treated as income of a U.S. resident to the extent the income is included in the distributive share of the LLC's members that are themselves U.S. residents (looking through any partnerships or other pass-through entities that are themselves partners or members). Certain publicly-traded partnerships are classified for U.S. tax purposes as corporations taxable at the entity level and thus would not be considered "partnerships" for purposes of applying the rules of paragraph 1 to determine whether income they receive is income of a U.S. resident.

The treatment under the Convention of income received by a trust or estate will be determined by the residence for taxation purposes of the person subject to tax on such income, which may be the grantor, the beneficiaries, or the estate or trust itself, depending on the circumstances.

Paragraph 1 also specifies that a person liable to tax in a State only in respect of income from sources within that State will not be treated as a resident of that State for purposes of the Convention. For example, a Turkish consular official stationed in the United States, who may be subject to U.S. tax on his U.S. source investment income but not on his non-U.S. source income would not be considered a resident of the United States

for purposes of the Convention (see Code section 7701(b)(5)(B)). Similarly, a Turkish enterprise with a permanent establishment in the United States is not, by virtue of that permanent establishment, a resident of the United States. The enterprise is subject to U.S. tax only with respect to its income attributable to the U.S. permanent establishment, not with respect to its worldwide income, as is a U.S. resident.

It is understood that the two Contracting States and their political subdivisions are to be treated as residents of those States for purposes of Convention benefits.

Paragraph 2

If an individual is considered a resident of each State under its laws, a single State of residence is determined by application of the tie-breaker rules of paragraph 2. Paragraph 2 a) provides that such an individual will be resident in the State in which the individual has a permanent home. If the individual has a permanent home available to him in both States, he will be considered to be a resident of the Contracting State to which his personal and economic relations are closest, i.e., the location of his "centre of vital interests." Under paragraph 2 b), if he has no "centre of vital interests" or if he does not have a permanent home available to him in either State, he will be treated as a resident of the Contracting State in which he maintains an habitual abode. Under paragraph 2 c), if he has an habitual abode in both States or in neither of them, he will be treated as a resident of the State of which he is a citizen. If he is a citizen of both States or of neither, paragraph 2 d) provides that the competent authorities will, by mutual agreement, assign a single State of residence. As noted above, these tests may also be applied to determine whether a U.S. citizen or green card holder is to be treated as a resident of the United States or of a third state for purposes of the Convention.

Paragraph 3

The tie-breaker rules of paragraph 2 apply only to individuals. Paragraph 3 addresses companies that are treated as a resident of each State under its internal laws. A corporation

that is incorporated under the laws of the United States or one of its states or the District of Columbia and that is managed and controlled in Turkey might be such a dual resident. Paragraph 3 provides that such a company will be considered to be a resident of the State in which it has its place of incorporation. Under subparagraph 1 e) of Article 3 (General Definitions), a company has its "place of incorporation" in Turkey if its legal head office is in Turkey and in the United States if it is organized, created, or incorporated in the United States or in any political subdivision. It is understood that the place an entity is created, organized, or incorporated is sufficiently analogous to the location of the legal head office that, in virtually all cases, the tie-breaker rule of paragraph 3 will result in a single State of residence.

Paragraph 4

Paragraph 4 addresses dual-residence issues for persons other than individuals or companies. Under this paragraph, the competent authorities are instructed to determine a single State of residence by mutual agreement, and to determine how the Convention will apply to such a person.

Article 5 - PERMANENT ESTABLISHMENT

This Article defines the term "permanent establishment." This definition is relevant under several articles of the Convention. The existence of a permanent establishment in a Contracting State is necessary under Article 7 (Business Profits) for that State to tax the business profits of a resident of the other Contracting State. Because the term "fixed base" in Article 14 (Independent Personal Services) is understood by reference to the definition of "permanent establishment," Article 5 is also relevant for purposes of Article 14. Articles 10, 11 and 12 (dealing with dividends, interest, and royalties, respectively) provide rules limiting the source State's taxation of these items of income when they are received by a resident of the other State but only when such income is not attributable to a permanent establishment or fixed base that the resident has or had in the source State. Article 13 (Gains) permits the non-resident

Contracting State to tax gains on the disposition of movable property forming part of the business property of a permanent establishment located in that State. Article 21 (Other Income) permits the non-resident State to tax any item of income (except income from immovable property) not dealt with elsewhere in the Convention (including income from a third country), to the extent it is attributable to a permanent establishment located in that State.

This Article is similar in many respects to the corresponding articles in the OECD Model and in recent U.S. treaties. In some important respects, however, it is patterned more closely after the permanent establishment article in the U.N. Model.

Paragraph 1

Paragraph 1 provides the basic definition of the term "permanent establishment." As used in the Convention, the term means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

Paragraph 2

Paragraph 2 contains a list of fixed places of business that will constitute a permanent establishment. The list is illustrative and non-exhaustive. According to paragraph 2, the term permanent establishment includes a place of management, a branch, an office, a factory, a workshop, and a mine, oil or gas well, quarry or other place of extraction of natural resources. The use of singular nouns in this illustrative list is not meant to imply that each such place necessarily represents a separate permanent establishment. In the case of mines or wells, for example, several such places of business could constitute a single permanent establishment if the project is a whole commercially or geographically.

A permanent establishment also includes a building site or a construction, assembly or installation project, but only if the site, project or activities continue for a period of more than six months. The six-month test applies separately to each individual site or project. The six-month period begins when

work (including preparatory work carried on by the enterprise) physically begins in a Contracting State. A site should not be regarded as having ceased to exist when work is temporarily discontinued. A series of contracts or projects that are interdependent both commercially and geographically are to be treated as a single project for purposes of applying the six-month threshold test. For example, the construction of a housing development would be considered a single project even if each house in the development is constructed for a different purchaser. If the six-month threshold is exceeded, the site or project constitutes a permanent establishment as of the first day that the work in that State began. This interpretation of the Article is based on the Commentaries to the corresponding provisions of Article 5 of the OECD Model and therefore is the generally accepted international interpretation of the language in paragraph 2 of Article 5 of the Convention. Paragraph 3 of the OECD Model contains language similar to that in subparagraph 2 g) of Article 5 of the Convention, although the OECD Model contains a twelve-month, rather than a six-month, test. Turkey entered a reservation to Article 5 of the OECD Model, specifying that it intends to apply a six-month rather than a twelve-month threshold.

Unlike many U.S. treaties, Article 5 of this Convention does not deal explicitly with the determination of when an installation or drilling rig or ship used for the exploration or exploitation of natural resources constitutes a permanent establishment. Point IV of the Protocol, relating to Articles 5, 7 (Business Profits) and 14 (Independent Personal Services), however, does deal with the income derived from such an installation, rig, or ship. Point IV specifies that the mere presence in one Contracting State of an installation, drilling rig, or ship that a resident of the other Contracting State uses for the exploration or exploitation of natural resources will never constitute a permanent establishment of that resident. If, however, a resident of one State carries on the drilling activities in the other Contracting State for a period or periods exceeding in the aggregate 183 days in any continuous 12-month period or performs the activities through a permanent establishment other than the drilling rig or ship, that presence or performance shall be treated as analogous to a permanent estab-

lishment, and the other Contracting State may tax the resulting income.

Paragraph 3

Paragraph 3 contains exceptions to the general rule of paragraph 1 that a fixed place of business through which a business is carried on constitutes a permanent establishment. The paragraph lists activities that may be carried on through a fixed place of business but that will not give rise to a permanent establishment. The use of facilities solely to store, display or deliver merchandise belonging to an enterprise will not constitute a permanent establishment of that enterprise. The maintenance of a stock of goods belonging to an enterprise solely for the purpose of storage, display or delivery, or solely for the purpose of processing by another enterprise will not give rise to a permanent establishment of the first-mentioned enterprise. The maintenance of a fixed place of business solely for the purchase of goods or merchandise or the collection of information for the enterprise, or for activities that have a preparatory or auxiliary character for the enterprise (for example, advertising (other than by an advertising company), the supplying of information, or the conduct of scientific activities) will not constitute a permanent establishment of the enterprise. Finally, a combination of the foregoing activities will not give rise to a permanent establishment if the combination results in an overall activity that is of a preparatory or auxiliary character. This combination rule differs from that in many recent U.S. treaties, under which any combination of otherwise excepted activities is not deemed to give rise to a permanent establishment, without the additional requirement that the combination, as distinct from each constituent activity, be preparatory or auxiliary. It is assumed that if preparatory or auxiliary activities are combined, the combination generally will also be of a character that is preparatory or auxiliary. If, however, this is not the case, under this Convention a permanent establishment may result from a combination of the activities listed in paragraph 3.

Paragraph 4

Paragraphs 4 and 5 specify the circumstances under which an agent will constitute a permanent establishment of the principal. Paragraph 4, subparagraph a) contains the standard rule that a dependent agent of an enterprise will be deemed to be a permanent establishment of the enterprise if the agent has and habitually exercises an authority to conclude contracts in the name of the enterprise. If, however, the agent's activities are limited to those activities specified in paragraph 3 that would not constitute a permanent establishment if carried on directly by the enterprise through a fixed place of business, the agent will not be a permanent establishment of the enterprise. This Convention contains an additional test, in subparagraph 4 b), for determining whether a dependent agent will constitute a permanent establishment of the principal. Under subparagraph 4 b), which is not found in the OECD Model or in most U.S. treaties, even if the agent does not have the authority to conclude contracts in the name of the enterprise, it may constitute a permanent establishment of the enterprise if certain conditions are met: (1) the agent maintains a stock of goods or merchandise from which the agent regularly makes deliveries on behalf of the enterprise; (2) in addition to the regular delivery, the agent also undertakes virtually all of the activities connected with the sale, except for the conclusion of the contract; and (3) it is proved that this pattern is established to avoid host-State taxation of the enterprise. Condition (1) is found in the U.N. Model, but its applicability is significantly narrowed by conditions (2) and (3).

Paragraph 5

Under paragraph 5, an enterprise will not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through an independent agent, including a broker or general commission agent, if the agent is acting in the ordinary course of its business. Thus, there are two conditions that must be satisfied: the agent must be both legally and economically independent of the enterprise, and the agent must be acting in the ordinary course of its business in carrying out activities on behalf of the enterprise.

Whether the agent and the enterprise are independent is a factual determination. Among the questions to be considered are the extent to which the agent operates on the basis of instructions from the enterprise and whether the agent or the enterprise bears the business risk inherent in the activities carried on by the agent on behalf of the enterprise. Furthermore, even an otherwise independent commission agent would be deemed to be a dependent agent under paragraph 4 if the agent habitually exercised authority to conclude contracts in the name of the enterprise (as descibed above in connection with paragraph 4), because in such a case the agent would not be acting in the ordinary course of its trade or business as an independent commission agent.

Paragraph 6

Paragraph 6 clarifies that a company that is a resident of a Contracting State will not be deemed to have a permanent establishment in the other Contracting State merely because it controls, or is controlled by, a company that is a resident of that other Contracting State or that carries on business in that other Contracting State. The determination of whether or not a permanent establishment exists will be made solely on the basis of the factors described in paragraphs 1 through 5 of the Article. Whether or not a company is a permanent establishment of a related company, therefore, is based solely on those factors and not on the ownership or control relationship between the companies.

Article 6 - INCOME FROM IMMOVABLE PROPERTY (REAL PROPERTY)

This Article deals with the taxation of income from immovable, or real, property. The two terms should be understood to have the same meaning.

Paragraphs 1 and 3

Paragraph 1 of Article 6 provides that income of a resident of a Contracting State derived from real property situated in the other Contracting State may be taxed in the Contracting State in

which the property is situated. As clarified in paragraph 3, the income referred to in paragraph 1 means income from any use of real property, including, but not limited to, income from direct use by the owner and rental income from the letting of the property. Income from real property also includes income from agriculture and forestry. This Article does not grant an exclusive taxing right to the situs State, but merely grants it the primary right to tax. The Article does not impose any limitation on the situs State in terms of rate or form of tax.

Paragraph 2

Paragraph 2 provides that the terms "immovable property," or "real property," have the same meaning that they have under the law of the situs State. In addition, the paragraph specifies certain classes of property that, regardless of internal law definitions, are to be included within the meaning of the term for purposes of the Convention. This expanded definition conforms to that in the OECD Model, except that it also includes (at Turkey's request) "fishing places of every kind." The definition of "real property" for purposes of Article 6 is more limited than the expansive definition of "real property situated in the Other Contracting State" in paragraph 2 of Article 13 (Gains), which includes not only immovable property as defined in Article 6 but certain other interests in real property.

Paragraph 4

Paragraph 4 clarifies that the situs State may tax income from real property of an enterprise and income from real property used for the performance of independent personal services, regardless of whether the enterprise or individual has a permanent establishment or fixed base in the situs State.

The Article does not include language found in many U.S. treaties providing for a taxpayer to elect to be taxed on real property income on a net basis. It was unnecessary to include such a provision because both States allow for net basis taxation of real property income under their respective internal laws.

Article 7 - BUSINESS PROFITS

This Article provides rules for the taxation by one of the States of the business profits of an enterprise of the other State. Several important rules regarding the taxation of business profits are found in the Protocol. These are discussed in this explanation of Article 7.

Paragraph 1

Paragraph 1 contains the basic rule that business profits of an enterprise of one Contracting State may not be taxed by the other Contracting State unless the enterprise carries on business in that other State through a permanent establishment (as defined in Article 5 (Permanent Establishment)) situated there. Where this condition is met, the State in which the permanent establishment is situated may tax the business profits of the enterprise that are attributable to the assets or activities of the permanent establishment.

Under Point II of the Protocol, in certain circumstances, the State in which the permanent establishment is situated may also tax business profits derived from the sale of goods or merchandise or the provision of services even if the assets and activities of the permanent establishment were not involved in the sale or services. This limited "force of attraction" rule is similar to, but narrower than, a rule found in the U.N. Model and is also similar to provisions that appear in the U.S. treaties with Mexico, Indonesia, and India. Under the Protocol rule, if an enterprise of one Contracting State derives income from the sale of goods or the carrying on of other business activities through a permanent establishment situated in the other Contracting State, certain income derived directly by the enterprise (i.e., not through the permanent establishment) from the sale of goods of the same or similar kind as those sold through the permanent establishment or from the carrying on of activities of the same or similar kind as those carried on through the permanent establishment may be attributed to the permanent establishment. Some countries, using the U.N. Model, request a force of attraction rule to prevent avoidance of their tax at source. Unlike the U.N. Model provision on which it is based, the force

of attraction rule in this Convention is limited to situations in which it can be proved that the transaction giving rise to the income was structured to avoid taxation in the country in which the permanent establishment is situated. For example, if the Istanbul office of a U.S. consulting firm provides certain services to small companies in Turkey and a very large Turkish company requires similar services but on a scale too large for the permanent establishment to handle, the Turkish company might enter into a contract with the consulting firm's home office in the United States to provide those services directly. The income from that transaction would not be attributed to the permanent establishment because it could not be shown that the transaction was structured through the U.S. office in order to avoid Turkish tax. If, however, some small Turkish companies are served by the Istanbul office and other similar-sized companies are served directly from the United States, it might be possible to prove that services were carried out through the home office to avoid Turkish tax. If such a case were made, the income from these contracts with the home office would be attributed to the permanent establishment.

Protocol Point V

Point V of the Protocol clarifies that income or gain may be attributable to a permanent establishment and may be taxed in the State in which the permanent establishment is situated even if the payment is deferred until after the permanent establishment no longer exists. This same deferred payment rule applies with respect to income from independent personal services attributable to a fixed base under Article 14 (Independent Personal Services). The deferred income rule also applies for purposes of determining whether income is attributable to a permanent establishment or fixed base under paragraph 5 of Article 10 (Dividends), paragraph 5 of Article 11 (Interest), paragraph 4 of Article 12 (Royalties), and paragraph 2 of Article 21 (Other Income) and whether gain is from the alienation of personal property forming part of the business property of a permanent establishment or a fixed base under paragraph 3 of Article 13 (Gains). This paragraph incorporates into the Convention the rule of Code section 864(c)-(6).

Paragraph 2

Paragraph 2 provides rules for the attribution of business profits to a permanent establishment. It provides that the Contracting States will attribute to a permanent establishment the profits that it would have earned had it been an independent entity, engaged in the same or similar activities under the same or similar circumstances. The computation of the business profits attributable to a permanent establishment takes into account the expenses that are deductible in accordance with the rules of paragraph 3. The profits attributable to a permanent establishment may be from sources within or without a Contracting State. Thus, certain items of foreign source income described in Code section 864(c)(4)(B) or (C) may be attributed to a U.S. permanent establishment of a Turkish enterprise and subject to tax in the United States. The concept of "attributable to" in the Convention is narrower than the concept of "effectively connected" in Code section 864(c). The limited "force of attraction" rule in Code section 864(c)(3), therefore, is not applicable under the Convention to the extent that it is broader than the rule of Point II of the Protocol.

Paragraph 2 differs in one respect from the comparable paragraph in the OECD Model, which speaks of treating a permanent establishment as if it were a "distinct and separate enterprise," and refers to it as dealing wholly independently with the enterprise of which it is a permanent establishment. The language in paragraph 2 of this Convention is intended to make clear that the permanent establishment is to be treated as if it were a totally independent enterprise, i.e., one that deals independently with all related companies, or with other permanent establishments of the enterprise, not just its home office.

Paragraph 3

Paragraph 3 of the Article complements paragraph 2 by providing rules for determining the amount of income attributable to a permanent establishment. Paragraph 3 provides that in determining the business profits of a permanent establishment, deductions shall be allowed for expenses incurred for the purposes of the permanent establishment. Deductions are to be allowed

regardless of where the expenses are incurred and regardless of whether they are incurred directly by the permanent establishment or whether they are actually reimbursed by the permanent establishment. Unlike many U.S. treaties, the paragraph does not specify that deductions are to be allowed for a reasonable allocation of expenses. However, as indicated in paragraph 16 of the OECD Commentary to Article 7, certain expenses may be estimated and allocated. The United States, for example, allocates interest expense under the rules of Code section 882 and will continue to do so under the treaty.

Point III of the Protocol clarifies, as does the UN Model and the Commentary to the OECD Model, that payments of interest, royalties, commissions and other similar payments by a permanent establishment to its head office or to other permanent establishments of the enterprise will be allowed as deductions only to the extent that they represent reimbursements of actual expenses. The point of this provision is to clarify that because the head office and the permanent establishment are parts of a single entity, there should be no profit element in intra-company transfers. To the extent, therefore, that a payment includes what would normally be a profit element (e.g., that part of a royalty payment that represents profit of the owner of the intangible, as opposed to the part that is a reimbursement for the costs of developing the intangible), it will not be deductible. The Protocol rule does not require that payments be specifically traceable to the permanent establishment to be deductible nor does it require that traced payments be deductible

Paragraph 4

Paragraph 4 provides that no profits will be attributed to a permanent establishment merely because it purchases goods or merchandise for the enterprise of which it is a permanent establishment. This rule refers to a permanent establishment that performs more than one function for the enterprise, including purchasing. For example, the permanent establishment may purchase raw materials for the enterprise's manufacturing operation and sell the manufactured output. While business profits may be attributable to the permanent establishment with respect to its sales activities, no profits are attributable to its purchasing

activities. If the sole activity were the purchasing of goods or merchandise for the enterprise, the issue of the attribution of income would not arise because, under subparagraph 3 d) of Article 5 (Permanent Establishment), there would be no permanent establishment.

Paragraph 5

Paragraph 5 provides that only those business profits derived from a permanent establishment's assets or activities are to be attributed to the permanent establishment. This rule clarifies (as noted in connection with paragraph 2 of the Article) that the Code's limited "force of attraction" principle is not incorporated into the Convention. Where it is applicable, Point II of the Protocol takes precedence over paragraph 5.

Paragraph 6

Paragraph 6 explains the relationship between the provisions of Article 7 and other provisions of the Convention. Under paragraph 6, where business profits include items of income that are dealt with separately under other articles of the Convention, the provisions of those articles will, except where they specifically provide to the contrary, take precedence over the provisions of Article 7. Thus, for example, the taxation of interest will be determined by the rules of Article 11 (Interest), and not by Article 7 unless, as provided in paragraph 5 of Article 11, the interest is attributable to a permanent establishment, in which case the provisions of Article 7 will apply.

Protocol Point IV

As discussed in the explanation to paragraph 2 of Article 5 (Permanent Establishment), point IV of the Protocol deals with the taxation of income from offshore mineral exploration. Point IV first clarifies that income from these activities is business profits or independent personal services income. As such, the income is generally only taxable by the non-resident State if it is attributable to a permanent establishment in that State. Under the provisions of Point IV, the mere presence in a country of an installation, drilling rig or ship for carrying out mineral

exploration or exploitation does not give rise to a permanent establishment. Business profits will nonetheless be taxable in the country where the exploration activity takes place if either (i) there is a permanent establishment, other than the installation, rig or ship, through which the income-generating activities are performed or (ii) the period during which the exploration activities or services are performed exceeds 183 days in a continuous 12-month period. While application of Protocol Point IV does not technically result in a permanent establishment, it does treat an enterprise that exceeds the 183-day threshold analogously to an enterprise that has a permanent establishment in the host country.

Relation to other articles

This Article is subject to the saving clause of paragraph 3 of Article 1 (Personal Scope). Thus, if, for example, a citizen of the United States who is a resident of Turkey derives business profits from the United States that are not attributable to a permanent establishment in the United States, the United States may tax those profits as part of the worldwide income of the citizen, notwithstanding the fact that this Article generally would exempt such income of a Turkish resident from U.S. tax.

As with other benefits of the Convention, the enterprise claiming the benefit of Article 7 must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

Article 8 - SHIPPING AND AIR TRANSPORT

This Article provides rules governing the taxation of profits from the operation of ships and aircraft in international traffic. The term "international traffic" is defined in subparagraph 1 i) of Article 3 (General Definitions).

Paragraph 1

Paragraph 1 provides that profits of an enterprise of a Contracting State from the operation of ships or aircraft in

international traffic shall be taxable only in the country of residence.

Paragraph 2

Paragraph 2 deals with certain income from the rental of ships or aircraft. As indicated in paragraph 5 of the OECD Commentaries to Article 8, income of an enterprise of a Contracting State from the rental of ships or aircraft on a full basis (i.e., with crew and supplies) is considered to be operating income and is, therefore, exempt from tax in the other Contracting State under paragraph 1. Paragraph 2 extends the exemption under the Article to certain income from the bareboat leasing of ships and aircraft. Unlike certain other U.S. treaties, however, this Convention extends the exemption only to bareboat rentals that are incidental to profits from the operation of ships and aircraft. Thus, an enterprise that is not in the business of operating ships or aircraft in international traffic and that derives income from leasing ships or aircraft would not be able to claim an exemption from source country tax under Article 8. Income from such non-incidental leasing of ships or aircraft, even if the ships or aircraft are used in international traffic, would be treated as royalty income, unless the income were attributable to a permanent establishment that the enterprise deriving the income had in the source State, in which case the income would be taxable as business profits. If the income is treated as royalty income, it would be taxable in the source State at a rate of 5 percent of the gross income under paragraphs 2 and 3 b) of Article 12 (Royalties). If treated as business profits, it would be taxable on a net basis under Article 7 (Business Profits).

When Turkey is the source State, Turkey's internal law will operate to limit the effect of this limited allowance of source State taxation of nonincidental rental income. Under its internal law, Turkey generally does not tax nonincidental rental income if both the lessor and lessee are located outside Turkey (even if the leased property is used within Turkey), as long as the rental payment is not reflected in any books of account that the lessee maintains in Turkey for Turkish tax purposes. Turkey, therefore, would not, for example, tax payments made by a U.S.

airline to a U.S. financial institution under an airplane finance lease, even if the airplane were to fly into Turkey.

Paragraph 3

Paragraph 3 provides that the profits of an enterprise of a Contracting State from the use, maintenance, or rental of containers (including equipment for their transport) for the transport of goods in international traffic will be exempt from tax in the other Contracting State. This result obtains regardless of whether the recipient of the income is engaged in the operation of ships or aircraft in international traffic, and regardless of whether the enterprise has a permanent establishment in the other Contracting State. Profits from the use of containers and related equipment includes charges for their delayed return.

Paragraph 4

This paragraph clarifies that the provisions of paragraphs 1 and 3 also apply to profits derived by an enterprise of a Contracting State from participation in a pool, joint business, or international operating agency. This refers to various arrangements for international cooperation by carriers in shipping and air transport. For example, airlines from two countries may agree to share the transport of passengers between the two countries. They each will fly the same number of flights per week and share the revenues from that route equally, regardless of the number of passengers that each airline actually transports. Paragraph 4 makes clear that with respect to each carrier, the income dealt with in the Article is that carrier's share of the total transport, not the income derived from the passengers actually carried by the airline.

Relation to other articles

By virtue of paragraph 6 of Article 7 (Business Profits), profits of an enterprise of a Contracting State that are exempt in the other Contracting State under paragraph 1 or 3 of Article 8 remain exempt even if the enterprise has a permanent establishment in that other Contracting State to which the profits are attributable. Income from the nonincidental leasing of ships and

airplanes, which is not exempt at source under Article 8, may be taxed on a gross basis at source at a rate of 5 percent under paragraphs 2 and 3 b) of Article 12 (Royalties) or, if the enterprise that derives the income has a permanent establishment in the source State, may be taxed on a net basis at source under Article 7 (Business Profits).

The taxation of gains from the alienation of ships, aircraft or containers is dealt with in paragraph 4 of Article 13 (Gains).

Paragraph 3 of Article 15 (Dependent Personal Services) deals with taxation of employees of shipping and airline enterprises.

This Article is subject to the saving clause of paragraph 3 of Article 1 (Personal Scope). The United States, therefore, may tax the shipping or air transport profits of a resident of Turkey if that Turkish resident is a citizen of the United States.

As with any benefit of the Convention, an enterprise claiming the benefit of this Article must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

Article 9 - ASSOCIATED ENTERPRISES

Article 9 incorporates into the Convention the general arm's-length principles reflected in the U.S. domestic transfer pricing provisions. It provides that when associated enterprises (i.e., related persons described in subparagraphs 1 a) and 1 b)) engage in transactions that are not at arm's length, the Contracting States may make appropriate adjustments to the taxable income and tax liability of such enterprises to reflect the income these enterprises would have earned or the tax for which they would have been liable had the transaction between them been at arm's length.

Paragraph 1

Paragraph 1 deals with the circumstance where an enterprise of a Contracting State is related to an enterprise of the other Contracting State, and the enterprises make arrangements or

impose conditions in their commercial or financial relations different from those that would be made between independent persons. Under these circumstances a Contracting State may adjust the income (or loss) of its residents to reflect the income that would have been earned in the absence of such a relationship.

The paragraph specifies what the term "associated enterprise" means in this context. An enterprise of one Contracting State is associated with an enterprise of the other Contracting State if it participates directly or indirectly in the management, control, or capital of the other. Two enterprises also are associated if there is a "brother-sister" type connection between them in that a third person or persons participate directly or indirectly in the management, control, or capital of both. The term "control" includes any kind of control, whether or not legally enforceable and however exercised or exercisable.

The fact that a transaction is entered into between such related enterprises does not, in and of itself, mean that a Contracting State may adjust the income (or loss) of one or both of the enterprises under the provisions of this Article. If the conditions of the transaction are consistent with those that would be made between independent persons, the income arising from that transaction should not be the subject of adjustment under this Article.

Similarly, the fact that associated enterprises may have concluded arrangements, such as cost sharing arrangements or general services agreements, is not in itself an indication that the two enterprises have entered into a non-arm's-length transaction that should give rise to an adjustment under pararaph 1. Both related and unrelated parties enter into such arrangements (e.g., joint venturers may share some development costs). As with any other kind of transaction, when related parties enter into an arrangement, the specific arrangement must be examined to see whether or not it meets the arm's-length standard. In the event that it does not, an appropriate adjustment may be made, which may include modifying the terms of the agreement or recharacterizing the transaction to reflect its substance.

Paragraph 2

The adjustments allowed by the provisions of paragraph 1 can give rise to taxation of the same income by both Contracting States in the hands of the two related parties. To address this potential double taxation, paragraph 2 provides that where a Contracting State has made an adjustment to the profits of an enterprise of that State that the other State agrees is consistent with the provisions of paragraph 1 (i.e., that was appropriate to reflect arm's length conditions), the other State will make a corresponding, or correlative, adjustment to the tax liability of the associated enterprise resident in that other State. The Contracting State making such an adjustment will take the other provisions of the Convention, where relevant, into account. For example, if the United States makes an adjustment under paragraph 1 that increases the income of a U.S. parent corporation, and Turkey, under paragraph 2, makes a correlative adjustment to the income of the Turkish subsidiary, the effect of the correlative adjustment may be to treat the Turkish subsidiary as having made a distribution of profits to its U.S. parent corporation, in which case the provisions of Article 10 (Dividends) will apply, and Turkey may impose a withholding tax on the dividend. The rate of the tax will be determined by the provisions of Article 10. The competent authorities are authorized to consult, if necessary, to resolve any differences in the application of these provisions. For example, there may be a disagreement over whether an adjustment made by a Contracting State under paragraph 1 was appropriate.

Relation to other articles and the Code

Paragraph 2 of Article 25 (Mutual Agreement Procedure) explains that the corresponding adjustment by the other Contracting State called for by paragraph 2 of Article 9 will not be prevented by a domestic statute of limitations or other procedural limitation, as long as the competent authority of that other State receives notification of the case within five years of the taxable year to which the case relates.

The saving clause of paragraph 3 of Article 1 (Personal Scope) does not apply to paragraph 2 of Article 9 (see the

exceptions to the saving clause in subparagraph a) of paragraph 4 of Article 1). Thus, even if the statute of limitations has run, or there is a closing agreement between the Internal Revenue Service and the taxpayer, a refund of tax may be required in order to implement a correlative adjustment arising under paragraph 2 of Article 9. Statutory or procedural limitations, however, cannot be overridden to impose additional tax because, under paragraph 2 of Article 1, the Convention cannot restrict any statutory benefit.

It is understood that this Article does not replace but rather complements adjustments provided for under internal law provisions of the Contracting States. Such adjustments -- the distribution, apportionment, or allocation of income, deductions, credits or allowances -- are permitted even if they are different from, or go beyond, those authorized by paragraph 1 of the Article, so long as they accord with the general principles of paragraph 1, i.e., that the adjustment reflects what would have transpired had the related parties been acting at arm's length. This Article also permits tax authorities to deal with thin capitalization issues. They may, in the context of Article 9, scrutinize more than the rate of interest charged on a loan between related persons. They also may examine the capital structure of an enterprise in determining whether a related party loan would have been made at arm's length, whether a payment in respect of that loan should be treated as interest, and, if it is treated as interest, under what circumstances interest deductions should be allowed to the payor. As discussed in the Commentaries to Article 9 of the OECD Model, this understanding is consistent with the views of most OECD member countries.

Article 10 - DIVIDENDS

Article 10 provides rules for both source and residence country taxation of dividends. Generally, the Article provides for full residence country taxation of dividends and dividend equivalents and for a limited source State right to tax such income. Article 10 also provides rules for the imposition of a tax at source on branch profits, analogous to the tax on dividends paid by a subsidiary to its parent company.

Paragraph 1

Paragraph 1 preserves the residence country's general right to tax dividends arising in the source country. The same result is achieved by the saving clause of paragraph 3 of Article 1 (Personal Scope).

Paragraph 2

Paragraph 2 permits the source State to tax dividends but limits the rate of source State tax if the dividends are beneficially owned by a resident of the other State. If the beneficial owner of the dividends is a resident of the other Contracting State, the source State tax is limited to 20 percent of the gross amount of the dividends unless the beneficial owner is a company that owns at least 10 percent of the voting power of the company paying the dividends, in which case the rate of source State tax is limited to 15 percent of the gross amount of the dividends. Indirect ownership of voting shares (e.g., through tiers of corporations) and direct ownership of nonvoting shares are not considered for purposes of determining eligibility for the 15 percent direct dividend rate. Notwithstanding the source State's treaty obligation to limit the rate of tax it applies to dividends, that State may withhold on dividends at the applicable domestic rates, as long as the State refunds in a timely manner any excess amount withheld over the maximum rates established by the treaty.

The rates of source-country tax provided for in this Convention are higher than in most U.S. treaties. It is Turkey's policy to retain high source-country taxing rights in its treaties, as indicated in its reservation to Article 10 of the OECD Model. In fact, however, Turkey generally does not, under its internal law, impose what the United States would consider to be a true shareholder-level tax on dividends paid to foreign persons. (Resident shareholders are subject to tax on the dividends they receive, with at least a partial credit for tax paid by the corporation, if total dividends received by a shareholder from a Turkish corporation exceed a certain inflation-adjusted threshold amount, currently TL 900 million). Corporate income is subject to two different taxes, for which the corporation is liable: (i)

a 25 percent tax on corporate profits and (ii) a "withholding" tax imposed on the after-tax profits, without regard to actual dividend distributions. Although the "withholding tax" is imposed on the corporation and not on the shareholders, it is understood that Article 10 applies to this tax.

Paragraph 2 relaxes the limitations on source-country taxation of dividends paid by certain U.S. and Turkish conduit entities. Dividends paid by U.S. Regulated Investment Companies ("RICs") and by Turkish Securities Investment Corporations or Securities Investment Funds, which are similar to U.S. RICs, are denied the 15 percent direct dividend rate and instead are subject to the 20 percent portfolio dividend rate regardless of the percentage of voting shares of the RIC or the comparable Turkish entity held directly by a corporate beneficial owner of the dividend. Dividends paid by a U.S. Real Estate Investment Trust ("REIT") and by a Turkish Real Estate Investment Corporation or Real Estate Investemnt Fund also are denied the 15 percent direct dividend rate. The 20 percent rate is only available for dividends from the REIT (or similar Turkish entity) if they are beneficially owned by an individual owning less than 10 percent of the REIT (or similar Turkish entity). Thus, dividends paid by a REIT or by a Turkish Real Estate Investment Corporation or Real Estate Investment Fund, which are similar to U.S. REITs, are generally taxed at source at the full statutory rate (30 percent in the United States).

The denial of the 15 percent withholding rate at source to all shareholders in RICs, REITs, and comparable Turkish entities and the denial of the 20 percent rate to most shareholders of REITs and similar Turkish entities is intended to prevent the use of these conduit entities to gain unjustifiable benefits for certain shareholders. For example, a Turkish corporation that wishes to hold a diversified portfolio of U.S. corporate shares may hold the portfolio directly and pay a U.S. withholding tax of 20 percent on all of the dividends that it receives. Alternatively, it may place its portfolio of U.S. stocks in a RIC, in which the Turkish corporation owns more than 10 percent of the shares. Because the RIC pays no U.S. corporate tax with respect to income it distributes, the shareholder-level tax is the only tax the United States would impose. The RIC, therefore, could be

a pure conduit, and there may be no U.S. tax costs to the Turkish corporation of interposing the RIC as an intermediary in the chain of ownership. In the absence of the special rules in paragraph 2, the interposition of the RIC would transform portfolio dividends into direct investment dividends, taxable at source by the United States at only 15 percent.

Similarly, a resident of Turkey may hold U.S. real property directly, in which case it would pay U.S. tax either at a 30 percent rate on gross income or at the ordinary income tax rates specified in Code section 1 or 11 on the net income. As in the preceding example, by placing the real estate holding in a REIT, the Turkish investor could transform real estate income into dividend income and, absent the special rule, transform high-taxed real estate income into lower-taxed dividend income. In the absence of the special rule, if the REIT shareholder is a Turkish corporation that owns at least a 10 percent interest in the REIT, the withholding rate would be 15 percent; in all other cases it would be 20 percent. In either event, the tax would be less than that applicable to income from direct real property holdings. One exception to this rule is the relatively small individual investor who might be subject to a relatively low U.S. tax on the net income even if he earned the real estate income directly. Under the special rule in paragraph 3, such individuals, defined as those holding less than a 10 percent interest in the REIT, will be taxable at source at the maximum 20 percent rate.

Although the treaty permits Turkey to tax dividends from the Turkish equivalent of a RIC at a rate of 20 percent and to apply a higher rate to most dividends from the Turkish equivalent of a REIT, in fact,under Turkish law, at least through 1999, Turkey will not tax a U.S. person on the receipt of distributions from the Turkish equivalent of RICs and REITs.

The applicability of the reduced rates in paragraph 2 to the "beneficial owner" of dividends ensures that if a dividend paid by a resident of one State is received, for example, by a nominee or agent that is a resident of the other State on behalf of a person that is not a resident of that other State, the dividend will not be entitled to the benefits of this Article. However, a

dividend received by the nominee on behalf of a resident of that other State would be entitled to the benefits.

Paragraph 3

Paragraph 3 defines the term "dividends," as used in the Convention. The term includes income from shares or other rights (including "joussiance" shares or rights or founders shares) that are not debt-claims and that participate in profits. It also includes income derived from other corporate rights that is subjected to the same taxation treatment as income from shares by the domestic taxation laws of the Contracting State of which the company making the distribution is a resident. Thus, a constructive dividend that results from a non-arm's length transaction between a corporation and a related party is a dividend. The term "dividends" further specifically includes income from arrangements (including instruments denominated as debt claims) that carry the right to participate in profits, or that are determined by reference to profits, to the extent the income from the arrangement is characterized as a dividend under the law of the Contracting State in which the income arises.

In general, this definition has the effect of deferring to the source State's characterization of income as a dividend. It ensures, for example, that the source State may apply its internal laws to "thin capitalization" cases to tax income as dividends even where the income is denominated as "interest." It also preserves the right of the source State to apply its law to characterize as dividends payments arising in connection with certain financial transactions that give rise to income that is the economic equivalent of a dividend. In the case of the United States, the term "dividend" also includes amounts treated as a dividend under U.S. law upon the sale or redemption of shares or upon a transfer of shares in a reorganization. See, e.g., Rev. Rul. 92-85, 1992-40 IRB 10 (sale of foreign subsidiary's stock to U.S. sister company is a deemed dividend to extent of subsidiary's and sister's earnings and profits). Further, a distribution from a U.S. publicly traded limited partnership, which is taxed as a corporation under U.S. law, is a dividend for purposes of Article 10. However, a distribution by a limited liability

company ("LLC") is not taxable by the United States under Article 10, provided the LLC is not characterized as an association taxable as a corporation under U.S. law.

Point VI of the Protocol clarifies that the term "dividend" includes distributions from Turkish securities investment funds and real estate investment funds. Although these funds are not distinct legal persons under Turkish law, they are defined as corporate bodies under Turkey's income tax laws and, for income tax purposes, their distributions are treated as dividends.

Paragraph 4

Paragraph 4 provides for the imposition of a branch profits tax. This paragraph provides the basic authority under the Convention for a State to impose an additional tax (e.g., a branch profits tax such as that imposed by section 884(a) of the Code) on a company that is resident in the other Contracting State and that has a permanent establishment in the first-mentioned State. Subparagraph b) also permits the United States to impose an additional tax on a Turkish company that is subject to net basis taxation in the United States under Article 6 (Income from Immovable Property (Real Property)) or under paragraph 1 of Article 13 (Gains). (See Code sections 882(d) and 884(d)). The United States may not impose its branch profits tax on the business profits of a Turkish corporation that are effectively connected with a U.S. trade or business but that are not attributable to a permanent establishment and are not otherwise subject to net basis U.S. taxation under Article 6 or paragraph 1 of Article 13.

In the case of Turkey, the base of the tax is the amount of profits attributable to the Turkish permanent establishment of a U.S. enterprise, after payment of the Turkish corporate tax under the provisions of Article 7 (Business Profits). This is narrower than the base of the Turkish branch profits tax under its internal law. Under Turkish law, income of a foreign corporation, including capital gains, may be subject to branch profits tax even if it is not attributable to a permanent establishment in Turkey.

In the case of the United States, the base to which the additional tax is applied is only the "dividend equivalent amount" of the business profits or income of a Turkish company attributable to a U.S. permanent establishment or subject to tax on a net basis under Article 6 or paragraph 1 of Article 13. It is understood that the term "dividend equivalent amount" refers to Code section 884(b), as it may be amended from time to time.

Paragraph 4 provides that the branch profits tax shall not be imposed at a rate exceeding the direct dividend withholding rate of 15 percent that is provided for in paragraph 2 a).

Paragraph 5

Paragraph 5 applies to dividends paid with respect to holdings that form part of the business property of a permanent establishment or, in the case of a resident of Turkey, of a fixed base in the United States. Paragraph 5 excludes such dividends from the general source country limitations of paragraph 2 and provides that their taxation at source is governed instead by Articles 7 (Business Profits) or 14 (Independent Personal Services). Under these Articles, the State in which the permanent establishment or fixed base is located may tax the dividends on a net basis, using the rates and rules of taxation generally applicable in that State, as long as the taxation is in accordance with the rules set forth in those Articles.

In the case of dividends attributable to a fixed base, paragraph 5 provides for net basis treatment only when the fixed base is that of a Turkish resident in the United States and not when a U.S. resident has a fixed base in Turkey. This unilateral treatment was necessary because of particular provisions in Turkish internal law. Turkey does not have the capacity under its internal law to attribute income other than personal services income to a fixed base; dividend income is not, technically, personal services income. Therefore, if paragraph 5 required Turkey to tax a dividend attributable to a Turkish fixed base of a U.S. resident only as personal services income, Turkey would not be in a position to tax the dividend at all, even though the dividend would be appropriately sourced in Turkey. Because of the unilateral language in paragraph 5, Turkey may continue to

tax dividends sourced in Turkey and attributable to a U.S. resident's fixed base in Turkey as dividends and in accordance with the limitations of paragraph 2.

The provisions of paragraph 5 also apply if the permanent establishment or fixed base has ceased to exist when the dividends are received as long as the dividends are attributable to a permanent establishment or fixed base that did exist in an earlier year (see Point V of the Protocol).

Paragraph 6

Paragraph 6 bars one State from imposing any tax on dividends paid by a company resident in the other State, except insofar as such dividends are paid to a resident of the first-mentioned Contracting State or are held as part of the property of a permanent establishment or a fixed base situated in such first-mentioned State.. Thus, a State may not impose a "secondary withholding tax" on dividends paid by a nonresident company out of earnings and profits from that State.

Relation to other articles

Notwithstanding the foregoing limitations on source country taxation of dividends, the saving clause of paragraph 3 of Article 1 (Personal Scope) permits the Contracting States to tax dividends received by their residents, and the United States to tax dividends received by its citizens, as if the Convention had not come into effect.

As with other benefits of the Convention, a resident of one of the States claiming the benefit of this Article must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

Article 11 - INTEREST

Article 11 governs the taxation of interest. Generally, the Article provides for full residence country taxation of interest and for a limited source State right to tax such income.

Paragraph 1

Paragraph 1 preserves the general right of each Contracting State to tax its residents on interest arising in the other Contracting State. The same result is achieved by the saving clause of paragraph 3 of Article 1 (Personal Scope).

Paragraph 2

Paragraph 2 grants to the source State the right to tax interest payments beneficially owned by a resident of the other Contracting State. The rate of the source country tax is limited. The maximum rate of tax allowed by the source State varies, however, depending on the nature of the interest payment. Under the provisions of paragraph 3, certain classes of interest payments are exempt from source country tax.

The general rate of source country tax applicable to interest payments under paragraph 2 is 15 percent. This is higher than the rate of source country tax on interest in most U.S. treaties, and higher than that in the OECD Model. Turkey, however, entered a reservation in the OECD Model indicating its intention to provide for higher rates of withholding on interest than the 10 percent provided for in the Model.

Paragraph 2 also provides, however, that the rate of source country tax on interest derived with respect to any kind of loan granted by a financial institution may not exceed 10 percent. For this purpose the term "financial institution" includes banks, savings institutions and insurance companies.

The beneficial owner of an interest payment for purposes of Article 11 is the person to which the interest income is attributable for tax purposes. Thus, if interest arising in one of the States is received, for example, by a nominee or agent that is a resident of the other State on behalf of a person that is not a resident of that other State, the interest will not be entitled to the benefits of this Article. However, interest received by the nominee on behalf of a resident of that other State would be entitled to the benefits.

Paragraph 3

Paragraph 3 specifies certain categories of interest that are exempt from source State taxation. The categories of exempt interest are interest arising in one Contracting State paid to the Government of the other Contracting State or to the central bank of the other Contracting State (i.e., The Central Bank of Turkey or any Federal Reserve Bank of the United States) and interest arising in connection with a debt obligation that is guaranteed or insured by the other Contracting State. Subparagraph 3 c) is understood to refer to loans guaranteed or insured by such U.S. institutions as the Export-Import Bank and the Overseas Private Investment Corporation. The competent authorities may interpret subparagraph c) as including other similar institutions of either Contracting State.

Paragraph 4

Paragraph 4 of Article 11 defines the term "interest" as used in this Article. Subparagraph a) of paragraph 4 contains the general definition. Under subparagraph a), "interest" is defined to mean income from debt-claims of every kind, whether or not the claim is secured by a mortgage, and whether or not it carries a right to participate in the profits of the debtor. The definition of interest includes all other forms of income that are characterized as income from money lent under the laws of the Contracting State in which the income arises. Income from Government securities and from bonds or debentures, including premiums or prizes attaching to such securities, bonds, or debentures is considered interest for purposes of Article 11. Although not made explicit in this paragraph, the definition of interest also encompasses an excess inclusion with respect to a residual interest in a real estate mortgage investment conduit. A special rule is provided in paragraph 8 for the source country's taxation of this category of interest. The definition of interest excludes any item of income that is treated as a dividend under Article 10 (Dividends), even if such dividends are income arising from debt-claims. Unlike most U.S. treaties, the definition of interest does not exclude from the scope of the term penalty charges for late payment. Under Turkish law such

payments are regarded as interest and will, therefore, be subject to Turkish tax, subject to the provisions of Article 11.

Subparagraph b) of paragraph 4 includes within the definition of interest, applicable only for purposes of U.S. tax, certain "excess interest," on which U.S. tax is imposed under section 884(f)(1)(B) of the Code. Under the Code rule, "excess interest" is generally the excess of the total amount allowable as a deduction in computing the U.S. effectively connected income of a foreign corporation over the total interest paid by the foreign corporation's U.S. trade or business. The Convention permits the United States to apply its tax on excess interest (but at the lowered treaty rate) to the excess, if any, of (i) interest that is borne by (i.e., deductible in computing the income of) a U.S. permanent establishment, fixed base, or trade or business subject to tax in the United States on a net basis, over (ii) the interest paid by such permanent establishment, fixed base, or trade or business. Under current U.S. law, the excess amount is deemed paid by a U.S. corporation to a Turkish corporation. Current U.S. law imposes branch level interest taxes only on foreign corporations and not on non-corporate foreign residents. Interest will be considered "borne by" a permanent establishment even if the interest is not fully deductible in that year, provided it is allocable in that year to the permanent establishment's U.S. income under U.S. domestic rules.

Paragraph 5

Paragraph 5 provides an exception from the rules of paragraphs 1, 2, and 3 in cases where interest is attributable to a permanent establishment or, in the case of a resident of Turkey, to a fixed base in the United States. Such interest instead is governed by Article 7 (Business Profits) or 14 (Independent Personal Services). Under these Articles, the State in which the permanent establishment or fixed base is located may tax the interest on a net basis using the rules and rates of taxation generally applicable in that State, as long as the taxation is in accordance with the rules set forth in Article 7 or 14. In the case of interest attributable to a fixed base, paragraph 5 provides for net basis tax only when the fixed base is that of a

Turkish resident in the Unted States and not when a U.S. resident has a fixed base in Turkey. This unilateral treatment was necessary because of particular provisions in Turkish law. Turkey does not have the capacity under its internal law to attribute income, other than personal services income, to a fixed base; interest income is not considered to be personal services income. Therefore; if paragraph 5 required Turkey to tax interest attributable to a Turkish fixed base of a U.S. resident only as personal services income, Turkey would not be in a position to tax the interest at all, even if the interest is appropriately sourced in Turkey. Because of the unilateral language in paragraph 5, Turkey may continue to tax interest sourced in Turkey and attributable to a U.S. resident's fixed base in Turkey as interest and in accordance with the limitations of paragraphs 2 and 3.

Paragraph 6

Paragraph 6 provides a source rule for interest. It provides that interest shall be deemed to arise in a State when the payer is the State itself or a political subdivision, local authority, or resident of that State. In addition, interest paid by any person (whether or not a resident) and borne by a permanent establishment, fixed base, or trade or business subject to tax on a net basis in one of the States is deemed to arise in the State in which the permanent establishment, fixed base, or trade or business is situated. Paragraph 6 clarifies that the excess interest described in subparagraph b) of paragraph 4 is treated as arising in the United States. As indicated in connection with the discussion of paragraph 4 b), interest is considered "borne by" a permanent establishment, fixed base, or trade or business if it is allocable to (whether or not deductible from) taxable income of that permanent establishment, fixed base, or trade or business. If the actual amount of interest on the books of a U.S. branch of a Turkish business exceeds the amount of interest allocated to the branch under Section 882, any such interest will not be considered U.S. source interest for purposes of this Article. Conversely, the total amount of interest allocated to the branch under the section 882 regulations will be U.S. source even if the amount exceeds branch book interest.

Paragraph 7

Paragraph 7 deals with cases where there is a special relationship between the payer and the beneficial owner of interest. The provisions of Article 11 will apply only to the amount of interest payment that would have been made absent such special relationship (i.e., an arm's length interest payment). Any excess amount of interest paid remains taxable according to the laws of the source State, with due regard to the other provisions of the Convention. Thus, for example, if the excess amount would be treated as a distribution of profits, such amount could be taxed as a dividend rather than as interest, but the tax would be subject, if appropriate, to the rate limitations of paragraph 2 of Article 10 (Dividends).

Paragraph 8

Paragraph 8 deals with two additional classes of interest that are not subject to the limitations of paragraphs 2 and 3. Subparagraph a) of paragraph 8 deals with excess inclusions with respect to a residual interest in a U.S. real estate mortgage investment conduit (REMIC). Such income may be taxed in the United States under its internal law. Under U.S. law, this class of income is subject to a statutory withholding tax of 30 percent. The legislation that created REMICs in 1986 provided that such excess inclusions were to be taxed at the full 30 percent statutory rate, regardless of any then-existing treaty provisions to the contrary. Without a full tax at source, foreign purchasers of residual interests would have a competitive advantage over U.S. purchasers at the time these interests are initially offered. Also, absent this rule, the U.S. fisc would suffer a revenue loss with respect to mortgages held in a REMIC because of opportunities for tax avoidance created by differences in the timing of taxable and economic income produced by these interests.

Subparagraph b) of paragraph 8 deals with contingent interest of the type that does not qualify as portfolio interest under U.S. law and to analogous types of interest under Turkish law. Paragraph VII of the Protocol notes the understanding that the term "contingent interest" is to be defined for purposes of

paragraph 8 in accordance with the definition in sections 871(h)-(4) and 881(c)(4) of the Code. Such interest will be subject to tax at source under the provisions of Article 10 (Dividends). Thus, such interest payments would be subject to source country tax at the rates specified in paragraph 2 of Article 10.

Relation to other articles

Notwithstanding the limitations on source country taxation of interest contained in this Article, the saving clause of paragraph 3 of Article 1 (Personal Scope) permits the United States to tax interest received by its residents and citizens as if the Convention had not come into effect.

As with any other benefit of the Convention, a resident of one of the States claiming the benefit of this Article must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

Article 12 - ROYALTIES

Article 12 provides rules for source and residence country taxation of royalties. Generally, the Article provides for full residence country taxation of royalties and for a limited source State right to tax such income.

Paragraph 1

Paragraph 1 preserves the residence State's right to tax its residents on royalties arising in the other State. The same result is achieved by the saving clause of paragraph 3 of Article 1 (Personal Scope).

Paragraph 2

Paragraph 2 grants to the source State the right to tax royalty payments but limits the rate of source State tax if the royalties are beneficially owned by a resident of the other Contracting State. The maximum rate of tax allowed by the source State varies depending upon the nature of the payment. The

maximum rate of source country tax is 10 percent if the royalty payment is described in paragraph 3 a). Paragraph 3 a) generally describes royalties received for the use, the right to use, or the contingent sale of literary and artistic property, certain kinds of intellectual property, and certain property frequently referred to as "know-how." The 10 percent rate is higher than the rate of source country tax on royalties in most U.S. treaties and in the OECD Model, which provides for exemption at source. Turkey, however, entered a reservation in the OECD Model indicating its intention to provide for positive rates of withholding at source on royalties. If the royalty payment is described in paragraph 3 b), then paragraph 2 provides for a maximum rate of source country tax of 5 percent. Paragraph 3 b) defines as a "royalty" any payment received in connection with certain equipment leases.

The beneficial owner of royalty income for purposes of Article 12 is the person to which the income is attributable for tax purposes. Paragraph 2's focus on the "beneficial owner" ensures that if a royalty arising in one of the States is received, for example, by a nominee or agent that is a resident of the other State on behalf of a person that is not a resident of that other State, the royalty will not be entitled to the benefits of this Article. However, royalties received by the nominee on behalf of a resident of that other State would be entitled to the benefits.

Paragraph 3

Paragraph 3 defines the term "royalties" for purposes of the Article. Subparagraph a) of paragraph 3 defines the term to mean payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic, or scientific work; for the use of, or the right to use, any patent, trademark, design or model, plan, secret formula or process; or for information concerning industrial, commercial, or scientific experience (sometimes referred to as "know-how"). The term includes gains derived from the alienation of any such right or property that are contingent on the productivity, use, or further alienation thereof; as a consequence, such amounts may be taxed in accordance with this Article rather than being exempt from tax

at source under paragraph 5 of Article 13 (Gains). In addition, payments received in connection with the use or right to use motion pictures or works on film, tape, or other means of reproduction used for radio or television broadcasting are included in the definition of royalties. The reference to "other means of reproduction" makes clear that future technological advances in the field of radio and television broadcasting will not affect the inclusion of payments relating to the use of such means of reproduction within the definition of royalties. It is understood that whether payments for the use or the right to use computer software are treated as royalties or as business profits will depend on the facts and circumstances of the transaction. It is also understood that payments received in connection with the transfer of so-called "shrink-wrap" computer software are treated as business profits.

Subparagraph b) of paragraph 3, in deviation from the OECD Model and from most U.S. treaties, adds to the definition of the term "royalties" payments received as consideration for the use of, or the right to use, industrial, commercial or scientific equipment.

Some Turkish treaties specify in the definition of royalties that the term does not include income payments for the performance of personal services. It is understood that the absence of this explicit exclusion in this Convention should not be interpreted as meaning that the income arising from the performance of such services may be treated as royalties and taxed under Article 12 on a gross basis. Such services income would be covered under Article 7 (Business Profits) or 14 (Independent Personal Services).

Paragraph 4

Paragraph 4 of Article 12 provides an exception to the rules in paragraphs 1 and 2 in cases where the beneficial owner of the royalties carries on business through a permanent establishment in the source State or, in the case of a beneficial owner that is resident of Turkey, performs independent personal services from a fixed base situated in the United States. In such cases, the source State may tax the royalties if they are attributable to

the permanent establishment or fixed base, in accordance with the provisions of Article 7 (Business Profits) or Article 14 (Independent Personal Services). Under those Articles, the State in which the permanent establishment or fixed base is located generally will tax the royalties on a net basis, using rates and rules of taxation generally applicable in that State. In the case of royalties attributable to a fixed base, paragraph 4 provides for net basis treatment only when the fixed base is that of a Turkish resident in the United States and not when a U.S. rsident has a fixed base in Turkey. This unilateral treatment is a result of Turkey's internal law, which does not attribute income other than personal services income to a fixed base; royalties are not considered personal services income for this purpose. Therefore, if paragraph 4 required Turkey to tax royalties attributable to a fixed base that a U.S. resident has in Turkey only as personal services income, Turkey would not be in a position to tax the royalty at all, even if the royalty is appropriately sourced in Turkey. Because of the unilateral language in paragraph 4, Turkey may continue to tax royalties sourced in Turkey and attributable to a U.S. resident's fixed base in Turkey as royalties and in acordance with the limitations of paragraph 2.

The same rule applies if the permanent establishment or fixed base has ceased to exist when the royalties are received, as long as the royalties would have been attributable to the permanent establishment or fixed base had they been paid or accrued in the earlier year.

Paragraph 5

Paragraph 5 provides rules for determining the source of royalty payments. Under paragraph 5, royalties are generally deemed to arise in a Contracting State if paid by a resident of that State. However, if the obligation to pay the royalties was incurred in connection with a permanent establishment or a fixed base in one of the Contracting States, and the royalties are borne by that permanent establishment or fixed base, the royalties are deemed to arise in that State, regardless of whether the payor is resident in one of the Contracting States. In general, royalties are considered borne by a permanent establishment or

fixed base if deductible in computing the taxable income of that permanent establishment or fixed base. If royalties are neither paid by a resident of one of the Contracting States nor borne by a permanent establishment or fixed base in either State, but they relate to the use of a right or property in one of the Contracting States, they will be deemed to arise in the State where the right or property is used. For example, if a Turkish resident were to grant franchise rights to a resident of Mexico for use in the United States, the royalty paid by the Mexican resident to the Turkish resident for those rights would be U.S. source income under this Article, subject to U.S. withholding at the 10 percent rate provided in paragraph 2.

The rules of this Article differ from those provided under U.S. domestic law. Under U.S. domestic law, a royalty is considered to be from U.S. sources if it is paid for the use of, or the privilege of using, an intangible within the United States; the residence of the payor is irrelevant. If paid to a nonresident alien individual or other foreign person, a U.S. source royalty is generally subject to withholding tax at a rate of 30 percent under U.S. domestic law. By reason of paragraph 2 of Article 1 (Personal Scope), a Turkish resident would be permitted to apply the rules of U.S. domestic law to its royalty income if those rules produced a more favorable result in its case than those of this Article. However, under a basic principle of tax treaty interpretation, the prohibition against so-called "cherry-picking," the Turkish resident would be precluded from claiming selected benefits under the Convention (e.g., the tax rates only) and other benefits under U.S. domestic law (e.g., the source rules only) with respect to its royalties. See, e.g., Rev. Rul. 84-17, 1984-1 C.B. 308. For example, if a Turkish company granted franchise rights to a resident of the United States for use 50 percent in the United States and 50 percent in Mexico, the Convention would permit the Turkish company to treat all of its royalty income from that single transaction as U.S. source income entitled to the withholding tax reduction under paragraph 2. U.S. domestic law would permit the Turkish company to treat 50 percent of its royalty income as U.S. source income subject to a 30 percent withholding tax and the other 50 percent as foreign source income exempt from U.S. tax. The Turkish company could choose to apply either the provisions of U.S. domestic law or the

provisions of the Convention to the transaction, but would not be permitted to claim both the U.S. domestic law exemption for 50 percent of the income and the Convention's reduced withholding rate for the remainder of the income.

Paragraph 6

Paragraph 6 deals with cases involving special relationships between the payer and beneficial owner of a royalty. Paragraph 6 provides that the provisions of Article 12 will apply to royalty payments between related persons only to the extent that such payments would have been made absent their special relationship (i.e., an arm's length royalty payment). Any amount in excess of an arm's length payment remains taxable according to the laws of the source State, with due regard to the other provisions of the Convention. If, for example, the excess amount is treated as a distribution of profits under the law of the source State, such excess amount will be taxed as a dividend rather than as a royalty payment, but the tax imposed on the dividend payment will be subject, if appropriate, to the rate limitations of paragraph 2 of Article 10 (Dividends).

Relation to other articles

Notwithstanding the limitations on source country taxation of royalties contained in this Article, the saving clause of paragraph 3 of Article 1 (Personal Scope) permits the United States to tax royalties received by its residents and citizens as if the Convention had not come into effect.

As with other benefits of the Convention, a resident of one of the States claiming the benefit of this Article must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

ARTICLE 13 - GAINS

Article 13 provides rules governing when a Contracting State may tax gains from the alienation of property by a resident of the other Contracting State.

Paragraph 1

Paragraph 1 preserves the situs State's right to tax gains derived by a resident of the other Contracting State from the alienation of either real property, defined in paragraph 2, or an interest in a partnership, estate or trust to the extent the interest is attributable to real property situated in the first-mentioned State. The Convention does not interfere with the domestic law rules on the taxation of such gains, other than to require nondiscriminatory treatment under Article 24 (Non-Discrimination). Paragraph 1 does not grant the situs State an exclusive right to tax these gains. The residence State may also tax gains from real property, subject to the rules of Article 23 (Relief from Double Taxation).

Paragraph 2

Paragraph 2 elaborates on the rule of paragraph 1 by explaining that the term "real property situated in the other Contracting State" includes not only such property held directly, but also indirectly. Thus, paragraph 2 defines the term to include (i) real property referred to in Article 6 (Income from Immovable Property (Real Property)), (ii) a United States real property interest or an equivalent interest in Turkish real property, and (iii) an interest in a partnership, trust or estate to the extent the interest is attributable to real property (see Code section 897(g)). A "United States real property interest" is understood to refer to that term as it is defined in Code section 897 or any successor to that provision. It includes, therefore, an interest in a U.S. corporation, if at least 50 percent of the assets of the corporation consist of U.S. real property.

The definition of "real property situated in a Contracting State" for purposes of Article 13 is intended to permit both Turkey and the United States to apply their domestic laws to the taxation of gain in respect of real property situated within their respective borders. The definition applies solely for purposes of Article 13. Therefore, this definition has no effect on the right to tax income covered in other articles of the

Convention, such as Article 6 (Income from Immovable Property (Real Property)).

Paragraph 3

Paragraph 3 deals with the taxation of gains from the disposition of movable property that forms part of the business property of a permanent establishment or fixed base that a resident of one Contracting State has in the other State. Such gains may be taxed by the State where the permanent establishment or fixed base is located. This includes gains from the disposition of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base. Point V of the Protocol permits source State taxation of gains from the disposition of movable property that was part of a permanent establishment or fixed base even if the gains are deferred until after the permanent establishment or fixed base has ceased to exist. This rule preserves the U.S. tax imposed under Code section 864(c)(6), except that the treaty substitutes a permanent establishment threshold.

This provision permits gains from the alienation by a resident of a State of an interest in a partnership, trust or estate that has a permanent establishment situated in the other State to be taxed as gains attributable to such permanent establishment under paragraph 3. Thus, for example, the United States may tax gains derived from the disposition of an interest in a partnership that has a permanent establishment in the United States, whether or not the assets of such partnership consist of movable property.

Paragraph 4

Paragraph 4 provides that gains derived from the disposition of ships, aircraft, containers, or related equipment (including trailers, barges, and related equipment used for the transport of containers) operated in international traffic are taxable only in the State in which the alienator is resident. Occasional use of a ship, aircraft, container, or related equipment in domestic traffic should not cause the disposition of such property to fall outside the scope of this provision.

Paragraph 5

Paragraph 5 generally grants to the residence State the exclusive right to tax gains from the disposition of property not specifically referred to in the preceding paragraphs of Article 13. The second sentence of the paragraph provides an exception to this general rule, not found in other U.S. treaties, dealing with the taxation of income from the alienation of corporate shares or bonds. Under this rule, a Contracting State may, in accordance with its law, tax a resident of the other Contracting State on gain from the alienation of shares or bonds issued by a corporation that is a resident of the first-mentioned Contracting State if three conditions are satisfied: (1) the shares or bonds are not quoted on a stock exchange in that State; (2) the shares or bonds are alienated to a resident of that State; and (3) the alienator held the securities prior to alienation for one year or less. Under Turkish law at the time of signature of the Convention, a U.S. person disposing of shares or bonds of a Turkish corporation would be taxable in Turkey if the three conditions were met (i.e., if the non-listed securities of a Turkish company were alienated by the U.S. resident to a resident of Turkey, and the U.S. resident held the securities for one year or less). The United States, at the time of signature, does not have statutory authority to impose tax in these circumstances. However, paragraph 6 is drafted reciprocally; therefore, if the United States were to introduce a tax on the share gains of foreign persons, it could impose that tax in accordance with this paragraph.

Relation to other articles

Gains described in Article 12 (Royalties) (i.e., gains from the disposition of an intangible where the amount of the consideration is contingent upon the productivity, use or disposition of the intangible) are taxable in accordance with the provisions of Article 12, and not this Article.

Notwithstanding the foregoing limitations on source country taxation of certain gains, the saving clause of paragraph 3 of Article 1 (Personal Scope) permits the United States to tax gains realized by its residents and citizens as if the Convention had not come into effect.

As with other benefits of this Convention, a resident of one of the States claiming the benefit of this Article must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

Article 14 - INDEPENDENT PERSONAL SERVICES

The Convention deals in separate articles with different classes of income from personal services. Article 14 deals with the general class of income from independent personal services and Article 15 deals with the general class of income from employment, referred to as dependent personal service income. Exceptions or additions to these general rules are found in Articles 16 through 20 for directors' fees (Article 16); performance income of artistes and athletes (Article 17); pensions in respect of personal service income, social security benefits, and annuities (Article 18); government service salaries and pensions (Article 19); and students, apprentices, and teachers (Article 20).

Paragraph 1

Article 14 provides the general rule that an individual who is a resident of a Contracting State and who derives income from the performance of personal services in an independent capacity will be exempt from tax in respect of that income by the other Contracting State unless certain conditions are satisfied. The income may be taxed by the other State (the "host State") if the services are performed in the host State and if the income is attributable to a fixed base that is regularly available to the individual in the host State for the purpose of performing his services. Even if there is no fixed base, the host State may tax the income from services performed there if the individual deriving the income is present in the host State to perform the services for a period or periods exceeding in the aggregate 183 days in any continuous 12-month period.

The term "fixed base" is not defined in the Convention, but its meaning is understood to be analogous to that of the term "permanent establishment," as defined in Article 5 (Permanent

Establishment). Similarly, the rules of Article 7 (Business Profits) for attributing income and expenses to a permanent establishment are generally relevant for attributing income to a fixed base. In particular, the income attributed to the services must be taxed on a net basis, after allowance of deductions for business expenses. The taxing right conferred by this Article with respect to income from independent personal services is, however, somewhat more limited than that provided in Article 7 for the taxation of business profits. In both Articles 7 and 14 the income of a resident of one Contracting State must be attributable to a permanent establishment or fixed base in the host State in order for that State to have a taxing right. In Article 14, however, the income also must be attributable to services that are performed in the host State, while Article 7 is not concerned with the place of performance of the income-generating activities so long as the income is attributable to the permanent establishment.

The rule in Point V of the Protocol dealing with deferred income of a permanent establishment or fixed base applies to this Article. Thus, income or gain that is attributable to a fixed base but is deferred until after the fixed base is no longer available to the performer of the services may nevertheless be taxed by the State in which the fixed base was located.

Paragraph 2

Article 14 also applies to permit the non-resident State to tax an enterprise of the other State in respect of personal services if those services are performed in the non-resident State and are either attributable to a permanent establishment in that State or are performed over a period that exceeds 183 days in any continuous 12-month period. The enterprise deriving this income may elect to be taxed on a net basis, consistent with the provisions of Article 7 (Business Profits). This provision was added to accommodate Turkish rules that treat all personal services income derived by a nonresident alike, regardless of whether the services are performed by an individual or by a business entity. Paragraph 2 permits Turkey to apply its withholding tax to the professional services income of a U.S. enterprise taxable under Article 14 only if Turkey permits the

enterprise to elect to be subject to net basis taxation by claiming the same deductions to which it would be entitled were the provisions of Article 7 (Business Profits) to apply; Article 7 ordinarily applies to this type of income earned by an enterprise, and the United States will rely on Article 7 when a Turkish enterprise provides personal services in the United States.

By permitting the taxation of an enterprises's profits derived from services that continue for more than 183 days, whether or not there is a fixed place of business, paragraph 2 effectively broadens the source taxation of services income beyond what would be permitted under Articles 7 (Business Profits) and 5 (Permanent Establishment). Although the preferred U.S. treaty policy is that services do not give rise to a permanent establishment and are not taxable at source unless they are performed through a fixed place of business or by a dependent agent, the United States has agreed to provisions similar to those in paragraph 2 in other treaties with developing countries.

Relation to other articles

If an individual who performs independent personal services in the United States is a Turkish resident and is also a U.S. citizen, the United States may, by virtue of the saving clause of paragraph 3 of Article 1 (Personal Scope), tax the income of that person without regard to the restrictions of this Article.

Article 15 - DEPENDENT PERSONAL SERVICES

Article 15 deals with the taxation of remuneration derived by a resident of a Contracting State as an employee.

Paragraph 1

Under paragraph 1, remuneration in respect of employment derived by an individual who is a resident of a Contracting State generally may be taxed only by the State of residence. To the extent, however, that the remuneration is derived from an employ-

ment exercised in the other State ("the host State"), the remuneration may also be taxed by the host State, subject to the conditions specified in paragraph 2. In such a case the individual's State of residence will relieve double taxation in accordance with the provisions of Article 23 (Relief from Double Taxation). Consistent with the general rule of construction that the more specific rule takes precedence over the more general, employment income dealt with in Articles 16 (Directors' Fees), 18 (Pensions and Annuities), 19 (Government Service) and 20 (Students, Apprentices, and Teachers) is governed by the provisions of those articles rather than this Article. Thus, even though the State of source has a right to tax employment income generally under Article 15, it may not have the right to tax a particular type of income under the Convention if that right is proscribed by one of the aforementioned articles. Similarly, these other articles may expand the source State's right to tax beyond the circumstances in which Article 15 would permit it to tax.

Paragraph 2

Paragraph 2 provides that the host State may tax the remuneration of a resident of the other State derived from services performed in the host State if one of the following is true: (i) the individual is present in the host State for a period or periods exceeding 183 days in any continuous twelve-month period; (ii) the remuneration is paid by, or on behalf of, an employer who is a resident of the host State; or (iii) the remuneration is borne as a deductible expense by a permanent establishment or fixed base that the employer has in the host State. If a foreign employer pays the salary of an employee, but a host State corporation or permanent establishment reimburses the foreign employer in a deductible payment that can be identified as a reimbursement, either condition (ii) or (iii), as the case may be, will be considered to have been fulfilled. Conditions (ii) and (iii) are intended to assure that a Contracting State will not be required both to allow a deduction to the payor for the amount paid and to exempt the employee on the amount received. Failure to satisfy any of the three conditions will result in exclusive residence State taxation of employment income.

The 183-day period in condition (i) is to be measured using the "days of physical presence" method. Under this method, the days that are counted include any day in which a part of the day is spent in the host country. (Rev. Rul. 56-24, 1956-1 C.B. 851.) Thus, days that are counted include the days of arrival and departure; week-ends and holidays on which the employee does not work but is present within the country; vacation days spent in the country before, during and after the employment period, unless the individual's presence before or after the employment can be shown to be independent of his presence there for employment purposes; and time during periods of sickness, training periods, strikes, etc., when the individual is present but not working. If illness prevented the individual from leaving the country in sufficient time to qualify for the benefit, those days will not count. Also, any part of a day spent in the host country while in transit between the two points outside the host country is not counted. These rules are consistent with the description of the 183-day period in paragraph 5 of the Commentary to the OECD Model.

Paragraph 3

Paragraph 3 contains a special rule applicable to remuneration for services performed by an individual resident of one Contracting State as an employee aboard a ship or aircraft operated in international traffic. Under this paragraph, the employment income of such persons may be taxed in the State of residence of the enterprise operating the ship or aircraft. This is not an exclusive taxing right. The State of residence of the employee may also tax the remuneration. This provision is taken from the OECD Model, at Turkey's insistence. The United States prefers not to use this rule in treaties because U.S. internal law does not impose tax on non-U.S. source income of a person who is neither a U.S. citizen nor a U.S. resident, even if that person is an employee of a U.S. resident enterprise.

Paragraph 3 deals only with those employees who are members of the "regular complement" of a ship or aircraft. The "regular complement" includes the crew. In the case of a cruise ship, for example, it may also include others, such as entertainers, lecturers, etc., employed by the shipping company to serve on the

ship during its voyage. The use of the term "regular complement" is intended to clarify that a person who exercises his employment as, for example, an insurance salesman, while aboard a ship or aircraft is not covered by this paragraph.

Relation to other articles

A U.S. citizen who is resident in Turkey and who performs dependent services in the United States will be taxable in the United States on his remuneration by virtue of the saving clause of paragraph 3 of Article 1 (Personal Scope) even if , under paragraph 2, he would be exempt from U.S. tax were he not a U.S. citizen.

Article 16 - *DIRECTORS' FEES*

This Article provides that a Contracting State may tax the fees paid by a company that is a resident of that State for services performed in that State by a resident of the other State as a director of the company. Only the State of residence of the director, however, may tax any portion of the remuneration that is derived in respect of services performed outside the other Contracting State.

The fees covered by this Article include directors' fees as well as other similar payments. For this purpose, "similar payments" include fixed salaries (or the portion thereof) paid for services performed as a director (not to include any portion of such salary paid for performance as an officer).

Relation to other articles

This rule is an exception to the more general rules of Article 14 (Independent Personal Services) and Article 15 (Dependent Personal Services). Thus, for example, a U.S. resident who is a director (and not an employee) of a Turkish company may be subject to tax in Turkey on his or her director's fee whether or not the fee is attributable to a fixed base in Turkey and whether or not he or she is present in Turkey more than 183 days.

This Article is subject to the saving clause of paragraph 3 of Article 1 (Personal Scope). Thus, if a U.S. citizen who is a Turkish resident is a director of a U.S. corporation, the United States may tax his full remuneration regardless of the place of performance of his services.

Article 17 - ARTISTES AND ATHLETES

This Article deals with the taxation of artistes (i.e., performing artists and entertainers) and athletes resident in one Contracting State from the performance of their services as such in the other Contracting State. The Article applies both to the income of an entertainer or athlete who performs services on his own behalf and one who performs his services on behalf of another person, either as an employee of that person, or pursuant to any other arrangement. This Article applies, however, only with respect to the income of performing artists and athletes. Others involved in a performance or athletic event, such as producers, directors, technicians, managers, coaches, etc., remain subject to the provisions of Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services).

Paragraph 1

Paragraph 1 describes the circumstances in which one State may tax the performance income of an entertainer or athlete who is a resident of the other State. Income derived by a resident of one State from his personal activities as an entertainer or athlete exercised in the other State may be taxed in that other State if the amount of the gross receipts derived by the individual for the taxable year concerned exceeds $3,000 (or its equivalent in Turkish Lira). The $3,000 includes only gross compensation for the services rendered and does not include expenses reimbursed to the individual or borne on his behalf. If the gross receipts exceed $3,000, the full amount, not only the excess, may be taxed in the State of performance.

The OECD Model permits the country in which the performance occurs to tax the remuneration of entertainers or athletes with no dollar or time threshold. The United States introduces the

dollar threshold test in its treaties to distinguish between two groups of entertainers and athletes -- those who are paid very large sums of money for very short periods of service and who would, therefore, normally be exempt from host country tax under the standard personal services income rules, and those who earn only modest amounts and are, therefore, not clearly distinguishable from those who earn other types of personal service income.

Paragraph 1 overrides the limitations on source State taxation in Articles 14 (Independent Personal Services) and 15 (Dependent Personal Services). Thus, an individual who would be exempt from tax in the State where the services are performed under those Articles may nevertheless be subject to tax in that State under Article 17 if his gross receipts exceed the $3,000 threshold. An entertainer or athlete who receives less than the $3,000 threshold amount and who, therefore, is not subject to tax under the provisions of Article 17 may nevertheless be subject to tax in the host country under Article 14 or 15 if the tests for taxation at source under those Articles are met. For example, if an entertainer who is an independent contractor earns only $2,500 in the taxable year, but the income is attributable to a fixed base regularly available to him in the State of performance (such as a cocktail lounge in which he regularly performs), that State may tax his income under Article 14.

Income derived from one State by an entertainer or athlete who is a resident of the other State in connection with his or her activities as such, but from other than actual performance is not covered by this Article. Such income is covered instead by other articles of the Convention, as appropriate. For example, Article 12 (Royalties) would apply to any royalty income derived by the entertainer in connection with his or her activities. In determining whether income falls under Article 17 or another article, the controlling factor will be whether the income in question is predominately attributable to the performance itself or to other activities or property rights.

Paragraph 2

Paragraph 2 is intended to eliminate the potential for abuse when income from a performance by an entertainer or athlete does

not accrue to the performer himself, but to another person. Foreign entertainers commonly perform in the United States as employees of, or under contracts with, companies or other persons. The relationship may truly be one of employee and employer, such as in the case of a member of a team, with no abuse of the tax system either intended or realized. On the other hand, the "employer" may, for example, be a company established and owned by the performer, which is merely acting as the nominal income recipient in respect of the remuneration for the entertainer's performance. The entertainer may be acting as an "employee," receiving a modest salary, and arranging to receive the remainder of the income from his performance in another form or at a later time. In such case, absent the provisions of paragraph 2, the company providing the entertainer's services might escape host country tax because it earns business profits but has no permanent establishment in that country. The entertainer may largely or entirely escape host country tax by receiving only a small salary in the year the services are performed, perhaps small enough to place him below the $3,000 threshold in paragraph 1. He would arrange to receive further payments in a later year, when he is not subject to host country tax, perhaps as salary payments, dividends or liquidating distributions.

Paragraph 2 seeks to prevent this type of abuse while at the same time protecting the taxpayer's right to the benefits of the Convention when there is a legitimate employee-employer relationship between the performer and the person providing his services. Under paragraph 2, when the income accrues to a person other than the performer, and the performer (or persons related to him) participates, directly or indirectly, in the profits of that other person, the income of that other person may be taxed in the Contracting State where the performer's services are exercised, without regard to the provisions of the Convention concerning business profits (Article 7) or independent personal services (Article 14). Thus, even if the "employer" has no permanent establishment or fixed base in the host country, its income may be subject to tax there under the provisions of paragraph 2. Taxation under paragraph 2 is imposed on the person providing the services of the entertainer or athlete. This paragraph does not affect the rules of paragraph 1, which apply to the entertainer or athlete himself. The income taxable by virtue of paragraph 2

is reduced to the extent of salary payments to the performer, which are addressed by paragraph 1.

For purposes of paragraph 2, income is deemed to accrue to another person (i.e., the person providing the services of the entertainer or athlete) if that other person has control over, or the right to receive, gross income in respect of the services of the entertainer or athlete. Direct or indirect participation in the profits of a person may include, but is not limited to, the accrual or receipt of deferred remuneration, bonuses, fees, dividends, partnership income or other income or distributions.

The paragraph 2 override of the protection of Articles 7 (Business Profits) and 14 (Independent Personal Services) does not apply if it is established that neither the entertainer or athlete, nor any persons related to the entertainer or athlete, participate directly or indirectly in the profits of the person providing the services of the entertainer or athlete. Thus, for example, assume that a circus owned by a U.S. corporation performs in Istanbul, and the Turkish promoters of the performance pay the circus, which, in turn, pays salaries to the clowns. The circus has no permanent establishment in Turkey. Since the clowns do not participate in the profits of the circus, but merely receive their salaries out of the circus' gross receipts, the circus is protected by Article 7 and its income is not subject to Turkish tax, except to the extent consistent with the provisions of Article 7. Whether the salaries of the clowns are subject to Turkish tax depends on whether they exceed the $3,000 threshold in paragraph 1, and, if not, whether they are taxable under Article 15 (Dependent Personal Services).

This exception to the paragraph 2 override of the Articles 7 and 14 protection of persons providing the services of entertainers and athletes is not found in the OECD Model. The OECD Model *would override Articles 7 and 14 even in non-abusive situations, i.e.*, even where the performer does not participate in the profits of the person providing the services and receiving the income. The paragraph 2 override in this Convention, however, applies only in the potentially abusive situation where the performer participates in the profits of the venture. The

language of this paragraph is consistent with the U.S. reservation to paragraph 2 of the OECD Model.

Paragraph 3

Under paragraph 3, neither paragraph 1 nor 2 will apply to certain income derived by entertainers or athletes or their sponsoring organizations. In these cases, the provisions of Article 7 (Business Profits), 14 (Independent Personal Services) or 15 (Dependent Personal Services) will apply. The cases covered by paragraph 3 are those where the performance by the entertainer or athlete in the host State is substantially supported by either a non-profit organization of the other Contracting State, or by that other State itself or a political subdivision or local authority of that State. The income of entertainers or athletes whose performances come within these categories is subject to Article 14 (Independent Personal Services) or 15 (Dependent Personal Services), and the income of the sponsoring organization would be subject to Article 7 (Business Profits) or 14 (Independent Personal Services). Thus, for example, if the New York Philharmonic gave a concert in Istanbul, the members of the Orchestra would not be subject to Turkish tax even if their income from the performances in Turkey exceeded $3,000 in a year, so long as they were not present in Turkey for more than 183 days in a continuous 12-month period.

Relation to other articles

As indicated, the provisions of Article 17 generally expand the circumstances in which the source State may tax beyond those provided in Articles 14 (Independent Personal Services) or 15 (Dependent Personal Services). It also overrides Article 7 (Business Profits) or 14 (Independent Personal Services) in cases described in paragraph 2. Where Article 17 does not operate to permit source State taxation, the source State may nonetheless tax in accordance with provisions of these other Articles.

This Article is subject to the provisions of the saving clause of paragraph 3 of Article 1 (Personal Scope). Thus, if an entertainer or athlete who is resident in Turkey is a citizen of the United States, the United States may tax all of his income

from performances in the United States without regard to the provisions of this Article.

Article 18 - PENSIONS AND ANNUITIES

Article 18 deals with the taxation of private (i.e., non-government) pensions, annuities, social security, and similar benefits.

Paragraph 1

Paragraph 1 provides that private pensions and other similar remuneration paid in consideration of past employment are generally taxable only in the residence State. It is understood that the rules of this paragraph apply even if the payee of the pension is not the person who performed the past employment. For example, a pension paid to a surviving spouse who is a resident of Turkey would be exempt from tax by the United States on the same basis as if the right to the pension had been earned directly by the surviving spouse. A pension may be paid periodically or in a lump sum. The rules of this paragraph do not apply to government service pensions, which are dealt with in paragraph 2 of Article 19 (Government Service), nor do they deal with social security benefits, which are dealt with in paragraph 2 of Article 18.

Paragraph 2

Paragraph 2 provides that payments made by one of the Contracting States under the provisions of its social security system or similar legislation to a resident of the other State or to a citizen of the United States will be taxable only in the paying State. Pensions in respect of government service that fall under the provisions of a social security system as described in this paragraph are covered by this rule, and not by the rule of paragraph 2 of Article 20 (Government Service). The phrase "similar legislation" is intended to include United States tier 1 Railroad Retirement benefits. The reference to U.S. citizens is necessary to ensure that a social security payment by

Turkey to a U.S. citizen not resident in the United States will not be taxed by the United States.

Paragraph 3

Paragraph 3 of the Article provides for exclusive residence country taxation of annuities. The term "annuity" as used in this paragraph is defined to mean a stated sum paid periodically at stated times during life or during a specified number of years under an obligation to make the payment in return for adequate and full consideration (other than services rendered) in money or money's worth. An annuity received in consideration for services rendered would be treated as deferred compensation and generally would be taxable in accordance with Article 15 (Dependent Personal Services). This paragraph is intended to cover traditional annuity arrangements that provide retirement benefits to individuals. It is not intended to exempt from tax at source income from arrangements that are a variation of traditional annuities and that accrues to corporations or other legal persons.

Relation to other articles

Paragraph 2 is one of the exceptions listed in paragraph 4 a) of Article 1 (Personal Scope) to the saving clause of paragraph 3 of that Article. Thus, the United States will not tax social security benefits paid by Turkey to a U.S. citizen or resident. The provisions of paragraphs 1 and 3 of this Article are subject to the saving clause of paragraph 3 of Article 1 (Personal Scope). Thus, for example, a periodic pension or annuity payment received by a resident of Turkey who is a U.S. citizen may be taxed by the United States, regardless of the provision for exclusive residence taxation for those classes of income.

Article 19 - GOVERNMENT SERVICE

Article 20 deals with the taxation of income (including pensions) from governmental employment. It generally follows the corresponding provisions of the OECD Model.

Paragraph 1

Subparagraphs a) and b) of paragraph 1 deal with the taxation of government compensation other than a pension. Subparagraph a) provides the general rule that wages, salaries, and other remuneration paid by one of the Contracting States or by its political subdivisions or local authorities to any individual are generally exempt from tax by the other State, if the compensation is in respect of governmental services rendered to that State, subdivision or authority. Under subparagraph b), however, such payments are taxable only in the other State if the services are rendered there and if the individual is a resident of that State who is either a national (i.e., in the case of the United States, a citizen) of that State or who was a resident of that State prior to taking the governmental job (or who otherwise did not become resident of that State solely for purposes of taking the job). Thus, an individual who, after establishing U.S. residence, is hired by the Turkish Embassy in Washington, would be subject to U.S. (and not Turkish) tax on his Turkish salary. It is understood that the rule of subparagraph b) does not apply to the spouse of a government employee described in paragraph 1 if the spouse becomes employed by the sending State after taking up residence in the host State.

Paragraph 2

Paragraph 2 deals with the taxation of a pension paid by, or out of funds created by, one of the States or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority. Subparagraph a) provides the general rule that such a pension is taxable only by the paying State. Subparagraph b), however, provides an exception under which such a pension is taxable only in the residence State if the individual is a resident of, and a national of, that other State. If a Government pension otherwise covered by this paragraph is in the form of a social security benefit, paragraph 2 of Article 18 (Pensions and Annuities), rather than this Article, applies.

Paragraph 3

Paragraph 3 provides that the provisions of Articles 15 (Dependent Personal Services), 16 (Directors' Fees), and 18 (Pensions and Annuities) shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by one of the States or a political subdivision or a local authority thereof.

Relation to other articles

Under paragraph 4 b) of Article 1 (Personal Scope), the saving clause (paragraph 3 of Article 1) does not apply to the benefits conferred by one of the States under Article 20 if the recipient of the benefits is neither a citizen of, nor has immigrant status in, that State. Thus, for example, a Turkish resident who receives a pension paid by Turkey in respect of services rendered to the Government of Turkey shall be taxable on this pension only in Turkey unless the individual is a U.S. citizen or acquires a U.S. green card.

Article 20 - STUDENTS, APPRENTICES, AND TEACHERS

Article 20 deals with visiting students, apprentices, business trainees, and teachers.

Paragraph 1

An individual who, immediately before his visit, is a resident of one of the Contracting States and who visits the other Contracting State for the purpose of full-time education or training will not be taxed by that other State on amounts received from abroad to cover the cost of his maintenance, education or training. The reference to "full-time" is not intended to deny the benefits of this Article to a student or trainee who, in accordance with his visa, may hold a part-time job in addition to his studies or training. Such a person will still be entitled to benefits as long as he participates in a full-time program of study or training. However, if the visitor comes to the host State principally to work and also is a part-time student, he would not be entitled to benefits. Whether a student is considered "full-time" will be determined by the rules

of the educational institution at which he is studying. The requirement in the OECD Model that studies or training be the sole purpose of the visit makes the result less clear when the visitor engages both in studies or training and in work activities.

The exemption under paragraph 1 does not in any event extend to amounts received as compensation for services rendered, which are covered under Article 14 (Independent Personal Services) or Article 15 (Dependent Personal Services). The exemption also does not apply to any grant provided from within the host State, which is taxable in accordance with the domestic laws of that State.

Paragraph 2

Paragraph 2 deals with certain remuneration of teachers or instructors who are residents of one Contracting State and who visit the other State for a period not exceeding two years for the purpose of teaching or engaging in research in that other State. Paragraph 2 exempts such visitors from taxation in the host State with respect to any remuneration for their teaching or research that arises outside that State. Remuneration arising within the host State is subject to the provisions of Articles 14 (Independent Personal Services) or 15 (Dependent Personal Services), as the case may be. If the visit exceeds two years, the exemption is lost for the entire period.

If a U.S. resident professor at an American university spends a sabbatical year teaching at a university in Turkey and receives a salary from the U.S. university or receives a research grant from a U.S. institution, these items of income would be exempt in Turkey, so long as his stay in Turkey does not exceed two years. If he is also paid by the Turkish university that he is visiting, that income would not be covered by Article 20, but would be dealt with under the provisions of the other articles dealing with personal services income.

Relation to other articles

Under subparagraph 4 b) of Article 1 (Personal Scope), Article 20 is an exception to the saving clause of paragraph 3 of Article 1 for individuals who are residents of a Contracting State under its law, but who are not nationals or permanent residents of that State. The saving clause does, however, apply for nationals or permanent residents of a Contracting State (i.e., in the United States, citizens or green card holders). A U.S. citizen who is a resident of Turkey and who studies at a U.S. university would, therefore, not be entitled to any of the benefits of this Article

Article 21 - OTHER INCOME

This Article provides the rules for the taxation of items of income not dealt with in the other articles of the Convention. An item of income is "dealt with" in an article when an item in the same category is a subject of the article, whether or not any treaty benefit is granted to that item of income. Article 21 deals with classes of income that are not dealt with elsewhere, such as lottery winnings, punitive (but not compensatory) damages, covenants not to compete, and income from certain financial instruments not dealt with in other articles to the extent derived by persons that are not engaged in the trade or business of dealing in such instruments (if the transaction giving rise to the income is related to a trade or business, it is dealt with under Article 7 (Business Profits)). The article also deals with income of the same class as income dealt with in another article of the Convention, but from sources in third States, where the other article deals only with items of that class of income from sources within one of the Contracting States (e.g., Article 11 (Interest) or Article 12 (Royalties)).

Paragraph 1

Paragraph 1 contains the general rule that items of income not dealt with in the other articles of the Convention derived by a resident of one of the States will be taxable only in the State of residence. This exclusive right of taxation applies irrespective of whether the residence State exercises its right to tax the income covered by the Article. The phrase "items of

income of a resident" should be understood to mean "items of income beneficially owned by a resident." Thus, is an item of income otherwise covered by this paragraph is paid to a resident of a Contracting State as a nominee on behalf of a third-country resident, that income would not be exempt from source basis taxation under paragraph 1 but would fall outside the treaty altogether.

Paragraph 2

Paragraph 2 contains an exception to the general rule of paragraph 1 for income, other than income from real property, that is attributable to a permanent establishment or fixed base maintained in a Contracting State by a resident of the other Contracting State. The taxation of such income is governed by the provisions of Articles 7 (Business Profits) and 14 (Independent Personal Services). Thus, in general, third-country income that is attributable to a permanent establishment maintained in the United States by a Turkish enterprise would be taxable by the United States under Article 7. There is an exception to this rule for income from real property, as defined in paragraph 2 of Article 6 (Income from Immovable Property (Real Property)). If, for example, a Turkish resident derives income from real property located outside the United States but that is attributable to the resident's permanent establishment or fixed base in the United States, only Turkey and not the United States may tax that income. This special rule for foreign-situs real property is consistent with the general rule, also reflected in Article 6, that only the situs and residence states may tax real property income. Even if such property is part of the property of a permanent establishment or fixed base in a Contracting State, that State may not impose tax if neither the situs of the property nor the residence of the owner is in that State.

The rule in Point V of the Protocol dealing with deferred income of a permanent establishment or fixed base applies to this Article. Thus, income or gain from third-country sources that is attributable to a permanent establishment or fixed base, but that is deferred until after the permanent establishment or fixed base has ceased to exist, may nevertheless be taxed in the State in which the permanent establishment or fixed base was located.

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This Article is subject to the saving clause of paragraph 3 of Article 1 (Personal Scope). Thus, the United States may tax the income of a Turkish resident not dealt with elsewhere in the Convention, if that Turkish resident is a citizen of the United States.

As with other benefits of the Convention, a resident of one of the States claiming the benefit of this Article must be entitled to the benefit under the provisions of Article 22 (Limitation on Benefits).

Article 22 - LIMITATION ON BENEFITS

Article 22 assures that tax benefits granted by a Contracting State pursuant to the Convention are limited to the intended beneficiaries -- residents of the other Contracting State -- and are not extended indirectly to residents of third States not having a substantial business nexus with or presence in the other Contracting State. For example, a resident of a third State might establish a legal entity in Turkey that has no substantial business nexus with Turkey, but is in Turkey for the principal purpose of deriving income from the United States and claiming the benefits of the Convention with respect to that income. Absent Article 22, the entity would generally be entitled to benefits as a resident of Turkey, subject, however, to such limitations (e.g., business purpose, substance-over-form, step transaction or conduit principles) as may be applicable to the transaction or arrangement under the domestic law of the United States.

Examples used throughout the following discussion involve a Turkish resident claiming U.S. benefits. The provisions of the Article are reciprocal, and all of the examples, therefore, can be read as relating to a claim of Turkish benefits by a U.S. resident.

Paragraph 1

Paragraph 1 provides a two-part test, the so-called ownership and base erosion tests, both of which must be met for a

resident to be entitled to benefits under this paragraph. (If a person fails to qualify under this paragraph, benefits may still be granted if the person qualifies under the provisions of paragraphs 2 through 6.) Under the ownership aspect of the test, more than 50 percent of the beneficial interest in the resident (or, in the case of a company, more than 50 percent of each class of its shares) must be owned, directly or indirectly, by individual residents of a Contracting State (determined under Article 4 (Resident)), by U.S. citizens, or by persons that qualify for benefits under the provisions of paragraph 3, 4 or 5 (i.e., publicly traded companies or their subsidiaries, governments, or certain not-for-profit organizations). The base-erosion aspect of the test will be satisfied as long as a substantial part of the resident's income is not used, directly or indirectly, to meet liabilities in the form of deductible payments (including interest and royalties) to persons who are neither individual residents of a Contracting State (determined under Article 4 (Resident)), U.S. citizens, nor persons qualifying for benefits under the provisions of paragraphs 3, 4 or 5. It is understood that the term "income," as used in subparagraph b), is to be interpreted as "gross income" under U.S. law. Thus, in general, the term should be understood to mean gross receipts less cost of goods sold.

The rationale for this two-part test is that treaty benefits can be indirectly enjoyed not only by equity holders of an entity but also by that entity's various classes of obligees, such as lenders, licensors, service providers, insurers and reinsurers, and others. It is not enough, therefore, to require substantial equity ownership by treaty country residents. To prevent benefits from inuring substantially to third-country residents, it is also necessary to limit the amount of an entity's deductible payments that are made to persons that are not themselves qualified treaty country residents. For example, a third-country resident could lend funds to a Turkish-owned Turkish corporation deriving income in the United States. While the Turkish corporation would be subject to Turkish corporate income tax, its taxable income could be substantially reduced by the deductible interest paid to the third-country resident. If, under a Convention between Turkey and the third country, that interest were subject to reduced Turkish tax, a substantial

portion of the U.S. treaty benefit with respect to the U.S.-source income would have flowed to the third-country resident.

Under paragraph 1, individuals who are residents of a Contracting State under Article 4 (Resident) are, without further testing, entitled to benefits. It is unlikely that an individual would be used to derive treaty-benefitted income on behalf of a third-country person. Moreover, treaty benefits are ordinarily denied unless the beneficial owner of the income is a resident in a Contracting State.

Paragraph 2

Paragraph 2 provides a test for eligibility for benefits that looks at the nature of the activity in the residence State by the resident and at the connection between that activity and the income for which treaty benefits are claimed. Under this "active trade or business" test, a resident of Turkey will be entitled to benefits with respect to income derived in the United States if that resident is engaged in an active trade or business in Turkey and if the item of income in question is derived in connection with, or is incidental to, that trade or business. It is understood that the active trade or business requirement may be satisfied by a person related to the resident. The assumption underlying the active trade or business test is that a third country resident that establishes a substantial operation in one State and that derives income from a similar activity in the other State would not do so primarily to avail itself of the benefits of the Convention; it is presumed in such a case that the investor had a valid business purpose for investing in the first State, and that the link between that trade or business and the activity that generates the treaty-benefitted income manifests a business purpose. It is considered unlikely that the investor would incur the expense of establishing a substantial trade or business in the first State simply to obtain the benefits of the Convention.

For this purpose, the business of making or managing financial investments is not a qualified active trade or business, unless those investment activities are banking or insurance activities carried on by a bank or insurance company.

Otherwise, the term "active conduct of a trade or business" is not specifically defined in the treaty. Pursuant to paragraph 2 of Article 3 (General Definitions), when determining whether a resident of Turkey is entitled to the benefits of the Convention with respect to income derived from U.S. sources, the United States will ascribe to the term the meaning it has under U.S. internal law. Accordingly, the U.S. competent authority will refer to the regulations issued under section 367(a) for the definition of an active trade or business.

U.S.-source income derived in connection with an active trade or business in Turkey will not qualify for benefits under paragraph 2 unless the trade or business in Turkey is substantial in relation to the activity in the United States that gives rise to the income. To be considered substantial, it is not necessary that the Turkish trade or business be as large as the U.S. income-generating activity. The Turkish trade or business cannot, however, in terms of income, assets, or similar measures, be only a very small percentage of the size of the U.S. activity.

The substantiality requirement is intended to prevent treaty-shopping abuses. For example, a third-country resident may want to acquire a U.S. company that manufactures television sets for worldwide markets; however, if its country of residence has no tax treaty with the United States, any dividends generated by the investment would be subject to a U.S. withholding tax of 30 percent. Absent a substantiality test, the investor could establish a Turkish corporation that would operate a small outlet in Turkey to sell a few of the television sets manufactured by the U.S. company. That Turkish corporation would then acquire the U.S. manufacturer with capital provided by the third-country resident. It might be argued that the U.S.-source income is generated from business activities in the United States related to the television sales activity of the Turkish parent and that the dividend income should be subject to U.S. tax at the 15 percent rate provided by paragraph 2 a) of Article 10 (Dividends) of the Convention. However, the substantiality test would not be met in this example, and, unless the Turkish company were a qualified resident under another paragraph of this Article, the dividends would remain subject to withholding in the United States at a rate of 30 percent.

Income is considered derived "in connection" with an active trade or business in the United States if, for example, the income-generating activity in the United States is "upstream," "downstream," or parallel to that conducted in Turkey. Thus, if the U.S. activity consisted of selling the output of a Turkish manufacturer or providing inputs to the manufacturing process, or of selling in the United States the same types of products that are sold by the Turkish trade or business in Turkey, the income generated by that activity would be treated as earned in connection with the Turkish trade or business.

Income is considered "incidental" to the Turkish trade or business if, for example, it arises from the short-term investment of working capital of the Turkish resident in U.S. securities.

An item of income will be considered to be earned in connection with or to be incidental to an active trade or business in Turkey if the income is derived by the resident of Turkey claiming the benefits directly or indirectly through one or more other persons that are residents of the United States. Thus, for example, a Turkish resident could claim benefits with respect to an item of income earned by a U.S. operating subsidiary but derived by the Turkish resident indirectly through a wholly-owned U.S. holding company interposed between it and the operating subsidiary.

In general, it is expected that if a person qualifies for benefits under one of the objective tests of paragraphs 1, 3, 4 or 5, no inquiry will be made into qualification for benefits under paragraph 2. Upon satisfaction of any of the other tests of the Article (except paragraph 6), any income derived by the beneficial owner from the other Contracting State is entitled to treaty benefits. Under paragraph 2, however, the test is applied separately for each item of income.

It is intended that the provisions of paragraph 2 will be self-executing. Unlike the provisions of paragraph 6, discussed below, claiming benefits under this subparagraph does not require advance competent authority ruling or approval. The tax authorities may, of course, on review, determine that the taxpayer has

improperly interpreted the paragraph and is not entitled to the benefits claimed.

Paragraph 3

Under subparagraph 3 a), a company that is a resident of a Contracting State is entitled to treaty benefits if there is substantial and regular trading in the company's principal class of shares on a recognized stock exchange. Under subparagraph 3 b), the company will be entitled to benefits if it is wholly owned, directly or indirectly, by such a publicly traded company. If there is more than one company in the chain of ownership between the publicly traded company and the company claiming treaty benefits, each company in the chain must be a resident of a Contracting State. Benefits are granted to a company under this paragraph whether or not the ownership and base erosion tests of paragraph 1 or the active business connection tests of paragraph 2 are met.

The term "recognized stock exchange" is defined in the paragraph to mean, in the United States, the NASDAQ System and any stock exchange registered as a national securities exchange with the Securities Exchange Commission and, in Turkey, the Istanbul Stock Exchange. The competent authorities may, by mutual agreement, recognize additional exchanges for purposes of paragraph 3.

Paragraph 4

Paragraph 4 makes clear that a Contracting State, political subdivision or local authority thereof is entitled to benefits. A government or governmental entity is unlikely to allow itself to be used for purposes of treaty shopping.

Paragraph 5

Paragraph 5 provides that a not-for-profit organization (including a pension fund (providing pensions and other benefits to employees pursuant to a plan) and a private foundation) that is a resident of a Contracting State is entitled to benefits from the other Contracting State if it satisfies two conditions: (1)

it is generally exempt from tax in its State of residence by virtue of its not-for-profit status, and (2) either more than half of its support is expended for the benefit of persons that qualify for benefits under paragraphs 1, 3, 4, or 5, of the Article (including an individual resident of a Contracting State or a U.S. citizen), or more than half of its support is derived from such persons.

Thus, for example, a pension fund resident in Turkey would be entitled to the benefits of the Convention with respect to any income it derives from the United States if more than half of its beneficiaries are Turkish residents. A Turkish charitable organization that expends its funds principally outside of Turkey, but raises the bulk of its revenues from contributions from Turkish residents, would also be entitled to U.S. benefits with respect to its U.S. source income.

Paragraph 6

Paragraph 6 provides that a resident of a Contracting State that derives income from the other Contracting State and is not entitled to the benefits of the Convention under other provisions of the Article may, nevertheless, be granted benefits at the discretion of the competent authority of the Contracting State in which the income arises. This paragraph implicitly acknowledges that the mechanical tests of the foregoing paragraphs cannot account for every case in which a taxpayer is not treaty shopping.

This discretionary provision is included in recognition that, with the increasing scope and diversity of international economic relations, there may be cases where significant participation by third country residents in an enterprise of a Contracting State is warranted by sound business practice or long-standing business structures and does not necessarily indicate a motive of attempting to derive unintended Convention benefits.

The competent authority of a State will base a determination under this paragraph on whether the establishment, acquisition, or maintenance of the person seeking benefits under the

Convention, or the conduct of such person's operations, has or had as one of its principal purposes the obtaining of benefits under the Convention. Thus, persons that establish operations in one of the States with a principal purpose of obtaining the benefits of the Convention ordinarily will not be granted relief under paragraph 6.

The competent authority may determine to grant all benefits of the Convention, or it may determine to grant only certain benefits. For instance, it may determine to grant benefits only with respect to a particular item of income in a manner similar to paragraph 2. Further, the competent authority may set time limits on the duration of any relief granted.

It is assumed that, for purposes of implementing paragraph 6, a taxpayer will be permitted to present his case to competent authority for an advance determination based on the facts, and will not be required to wait until the tax authorities of one of the source State have determined that benefits are denied. In these circumstances, it is also expected that if the competent authority determines that benefits are to be allowed, they will be allowed retroactively to the time of entry into force of the relevant treaty provision or the establishment of the structure in question, whichever is later.

ARTICLE 23 (RELIEF FROM DOUBLE TAXATION)

This Article describes the manner in which each Contracting State undertakes to relieve double taxation. The United States uses the foreign tax credit method under its internal law, and by treaty. Turkey also uses a foreign tax credit method.

Paragraph 1

The United States agrees, in paragraph 1, to allow to its citizens and residents a credit against U.S. tax for income taxes paid or accrued to Turkey. Paragraph 1 also provides that the taxes referred to in subparagraph a) of paragraph 2 and paragraph 3 of Article 2 (Taxes Covered) are income taxes for U.S. purposes (but see below the description of Point IX of the Protocol).

This provision is based on the Treasury Department's review of Turkey's laws.

The credit under the Convention is allowed in accordance with the provisions and subject to the limitations of U.S. law, as that law may be amended over time, so long as the general principle of this Article, i.e., the allowance of a credit, is retained. Thus, although the Convention provides for a foreign tax credit, the terms of the credit are determined by the provisions, at the time a credit is given, of the U.S. statutory credit.

Subparagraph b) provides for a deemed-paid credit, consistent with section 902 of the Code, to a U.S. corporation in respect of dividends received from a corporation resident in the other Contracting State of which the U.S. corporation owns at least 10 percent of the voting stock. This credit is for the tax paid by or on behalf of the Turkish corporation on the profits out of which the dividends are considered paid.

As indicated, the U.S. credit under the Convention is subject to the various limitations of U.S. law (see Code sections 901 - 908). For example, the credit against U.S. tax generally is limited to the amount of U.S. tax due with respect to net foreign source income within the relevant foreign tax credit limitation category (see Code section 904(a) and (d)), and the dollar amount of the credit is determined in accordance with U.S. currency translation rules (see, e.g., Code section 986). Similarly, U.S. law applies to determine carryover periods for excess credits and other inter-year adjustments. Point VIII of the Protocol provides that a credit will be allowed against the alternative minimum tax (AMT) for taxes paid to Turkey. However, such credit cannot offset more than 90 percent of the AMT. Unused credits (because of the 90 percent limitation)may be carried forward or backward to be used against other years' AMT liability. Nothing in the Convention prevents the limitation of the U.S. credit from being applied on a per-country basis, an overall basis, or to particular categories of income (see, e.g., Code section 865(h)). The application of this general principle to the determination of the source of income for credit purposes is discussed below in connection with paragraph 3.

It is not U.S. policy to allow a credit by treaty for taxes that are not creditable under the Code. Accordingly, a credit is allowed under the Convention for the income taxes of Turkey specified in subparagraph a) of Article 2, because they have been judged to be creditable income taxes under the Code. The withholding tax under Article 94 of Turkey's Income Tax Law, however, is not considered an income tax under paragraph 1 of Article 23 (see Point IX of the Protocol). Article 94 requires corporations and business partnerships to pay a gross withholding tax on progress payments as they are made during a construction contract of longer than one year's duration. That tax is then used to offset the amount of corporate income tax owed upon completion of the contract. Issues exist about whether the Article 94 withholding tax is creditable either as a tax on net income under section 901 or as a tax "in lieu of" a net income tax under section 903 of the Code because it is a gross basis tax that is paid in addition to the corporate income tax. The Convention does not independently provide for a credit of this long-term construction contract withholding tax.

Paragraph 2

Turkey agrees, in paragraph 2, to allow its residents, who may be taxed by both Contracting States under the Convention, a credit against Turkish tax for income taxes paid to the United States. The credit under the Convention is allowed subject to the provisions of Turkish taxation laws. The credit cannot exceed the pre-credit amount of Turkish income tax appropriate to the income that may be taxed in the United States.

Paragraph 3

Where income derived by a resident of a Contracting State may be taxed in accordance with the Convention in the other Contracting State (except where that right is solely on the basis of citizenship under the saving clause of paragraph 3 of Article 1 (Personal Scope)), paragraph 3 provides that the item of income is treated as arising in the other Contracting State for purposes of computing the Convention's foreign tax credit. As a general matter, the source of income for credit purposes, determined as described in the preceding sentence, will be consistent with the

source rules provided in the Code for purposes of computing the foreign tax credit under the Code. If, however, there is an inconsistency between Convention and Code source rules, paragraph 3 provides that the Code source rules will be used to determine the limits for the allowance of a credit under the Convention.

Relation to other articles

By virtue of the exceptions in subparagraph 4 a) of Article 1(Personal Scope), this Article is not subject to the saving clause of paragraph 3 of Article 1. Thus, the United States will allow a credit to its citizens and residents in accordance with the Article, even if such credit were to provide a benefit not available under the Code.

Article 24 - NON-DISCRIMINATION

Article 24 assures nondiscriminatory taxation of similarly situated persons. Paragraph 1 provides nondiscrimination rules for nationals of a Contracting State, and paragraphs 2 thorough 6 provide nondiscrimination rules for residents of a Contracting State. Generally, for purposes of this Article, non-discrimination means providing national treatment. This Article does not require identical treatment of taxpayers. There may be distinctions in treatment based upon differences in taxpayers' circumstances.

Each of the relevant paragraphs of the Article provides a standard to determine whether two persons are comparably situated and when, therefore, their tax treatment should be compared to determine if discrimination exists. Although the actual words differ from paragraph to paragraph (e.g., paragraph 1 refers to two nationals "in the same circumstances," paragraph 2 refers to two enterprises "carrying on the same activities," and paragraph 4 refers to two enterprises that are "similar"), the common underlying premise is that if the difference in treatment is directly related to a tax-relevant difference in the situations of the domestic and foreign persons being compared, that

difference is not to be treated as discriminatory (e.g., one person is taxable in a Contracting State on worldwide income and the other is not, or tax may be collectible from one person at a later stage, but not from the other). Other factors that can lead to nondiscriminatory differences in treatment will be noted in the discussions of each paragraph.

The operative paragraphs of the Article also use different language to identify the kinds of differences in taxation treatment that will be considered discriminatory. For example, paragraphs 1 and 4 speak of "any taxation or any requirement connected therewith which is other or more burdensome," while paragraph 2 specifies that a tax "shall not be less favorably levied." Regardless of these differences in language, only differences in tax treatment that materially disadvantage the foreign person relative to the domestic person are properly the subject of the Article.

Paragraph 1

Paragraph 1 provides that a national of one Contracting State (as defined in subparagraph 1 f) of Article 3 (General Definitions) may not be subject to taxation or connected requirements in the other Contracting State that are other or more burdensome than the taxes and connected requirements imposed upon nationals of that other State in the same circumstances. For this purpose, the phrase "same circumstances" refers particularly to residence, or taxation on worldwide income. Nationals of a Contracting State are afforded protection under this paragraph even if they are not residents of either Contracting State. Thus, a U.S. citizen who is resident in a third country is entitled, under this paragraph, to the same tax treatment by Turkey as a Turkish citizen who is resident in that third country and in the same circumstances

Paragraph 1 does not, however, obligate the United States to apply the same taxing regime to a Turkish citizen who is not resident in the United States and a U.S. citizen who is not resident in the United States. Paragraph 1 applies only when the citizens of the two States are in the same circumstances. United States citizens who are not residents of the United States but

who are, nevertheless, subject to United States tax on their worldwide income are not in the same circumstances with respect to United States taxation as citizens of Turkey who are not United States residents. Therefore, Article 24 would not entitle a Turkish citizen not resident in the United States to the net basis taxation of U.S. source dividends or other investment income that applies to a U.S. citizen not resident in the United States.

Paragraph 2

Paragraph 2 provides that a permanent establishment in one of the Contracting States of an enterprise of the other Contracting State may not be less favorably taxed in the first-mentioned State than an enterprise of that first-mentioned State that is carrying on the same activities in the first-mentioned State.

Section 1446 of the Code imposes on any partnership with income that is effectively connected with a U.S. trade or business the obligation to withhold tax on amounts allocable to a foreign partner. In the context of the Convention, this obligation applies with respect to a Turkish resident partner's share of the partnership income attributable to a U.S. permanent establishment. There is no similar obligation with respect to the distributive shares of U.S. resident partners. It is understood, however, that this distinction is not a form of discrimination within the meaning of either paragraph 1 or 2. No distinction is made between U.S. and Turkish partnerships, since the law requires that both domestic and foreign partnerships withhold tax in respect of the partnership shares of non-U.S. partners. The requirement to withhold on the Turkish but not the U.S. partners' shares is not discriminatory taxation, but, like other withholding on nonresident aliens, is merely a reasonable method for the collection of tax from persons who are not continually present in the United States, and as to whom it otherwise may be difficult for the United States to enforce its tax jurisdiction. (Cf. the "backup withholding" rules of section 3406, which apply only to U.S. citizens and residents and serve a similar purpose.) If tax has been overwithheld, the partner can, as in other cases of overwithholding, file for a refund.

The fact that a U.S. permanent establishment of a Turkish enterprise is subject to U.S. tax only on income that is attributable to the permanent establishement, while a U.S. corporation engaged in the same activities is taxable on its worldwide income is not, in iteslf, a sufficient difference to deny national treatment to the permanent establishment. There are cases, however, where the two enterprises would not be similarly situated and differences in treatment may be warranted. For instance, it would not be a violation of the nondiscrimination protection of paragraph 2 to require the Turkish enterprise to provide information in a manner that may be different from the information requirements imposed on a resident enterprise because information may not be as readily available from a foreign as from a domestic enterprise.

The relationship between paragraph 2 and the imposition of the branch tax is dealt with below in the discussion of paragraph 6.

Paragraph 3

Paragraph 3 prohibits discrimination in the allowance of deductions. When a resident of one of the Contracting States pays interest, royalties or other disbursements to a resident of the other Contracting State, the first-mentioned State must allow a deduction for those payments in computing the taxable profits of the enterprise under the same conditions as if the payment had been made to a resident of the first-mentioned State. An exception to this rule is provided for cases where the provisions of paragraph 1 of Article 9 (Associated Enterprises), paragraph 7 of Article 11 (Interest) or paragraph 6 of Article 12 (Royalties) apply, because these provisions permit the denial of deductions in certain circumstances in respect of transactions between related persons. The term "other disbursements" is understood to include a reasonable allocation of executive and general administrative expenses, research and development expenses and other expenses incurred for the benefit of a group of related persons that includes the person incurring the expense.

The rules under section 163(j) of the Code relating to earnings-stripping are not discriminatory within the meaning of

paragraph 3. First, section 163(j) applies equally to interest paid to domestic or foreign related parties, as interest paid to all domestic tax-exempt entities related to the payor corporation (applying a greater than 50% ownership test) is subject to the provision. Second, as noted above, paragraph 3 does not apply to payments falling under Article 9(1) or 11(5), relating to transactions not conducted in accordance with the arm's length standard. As noted in the Commentary to Article 9 in the OECD Model, Article 9 is generally considered to be consistent with the application of thin capitalization rules. This would include the application of the rules under Code section 163(j), as long as such rules continue to be consistent with the arm's length standard.

Paragraph 4

Paragraph 4 requires that a Contracting State not impose other or more burdensome taxation or connected requirements on an enterprise of that State which is wholly or partly owned or controlled, directly or indirectly, by residents of the other State, than the taxation or connected requirements which it imposes on other similar enterprises of that first-mentioned State.

For the reasons discussed above in connection with the explanation of paragraph 2 of the Article, it is also understood that application of section 1446 of the Code, which prescribes withholding tax on non-U.S. partners, is consistent with the United States' obligations under paragraph 4.

It is further understood that the ineligibility of a U.S. corporation with nonresident alien shareholders to make an election to be an "S" corporation does not violate paragraph 4 of this Article. If a corporation elects to be an "S" corporation, it generally is not subject to income tax, and the shareholders take into account their pro-rata shares of the corporation's items of income, loss, deduction or credit. (The purpose of the provision is to allow an individual or small group of individuals to conduct business in corporate form while paying taxes at individual rates as if the business were conducted directly.) A nonresident alien does not pay U.S. tax on a net basis, and,

thus, does not generally take into account items of loss, deduction or credit. Thus, "S" corporation status is not available for corporations with nonresident alien shareholders because such shareholders are not net basis taxpayers. The S corporation regime is also unavailalble for corporations with other types of shareholders, where the purpose of the regime cannot be fulfilled or its mechanics implemented. For example, corporations with corporate shareholders are excluded because the goal of permitting individuals to conduct a business in corporate form at individual tax rates would not be furthered by their inclusion.

Paragraph 5

Paragraph 5 makes clear that nothing in the Article obligates a Contracting State to grant to a resident of the other Contracting State any personal allowances, reliefs, or other reductions for taxation purposes that it grants to its own residents on account of their civil status or family responsibilities. Thus, if an individual resident in Turkey owns a Turkish enterprise that has a permanent establishment in the United States, in assessing income tax on the profits attributable to the permanent establishment, paragraph 2 of the Article would not obligate the United States to allow to the Turkish resident the personal allowances for himself and his family that would be permitted if the permanent establishment were a sole proprietorship owned and operated by a U.S. resident.

Paragraph 6

Paragraph 6 of the Article specifies that no provision of the Article will prevent either Contracting State from imposing the branch taxes described in paragraph 4 of Article 10 (Dividends) and subparagraph 4 b) of Article 11 (Interest). Thus, even if the branch taxes were judged to violate the provisions of paragraph 2 or 4 of the Article, neither Contracting State would be constrained from imposing those taxes.

Paragraph 7

As noted above, notwithstanding the specification of taxes covered by the Convention in Article 2 (Taxes Covered), the nondiscrimination protection offered by this Article extends to taxes of every kind and description imposed by one of the Contracting States or a political subdivision or local authority thereof. Customs duties are not considered to be taxes for this purpose.

Relation to other articles

The saving clause of paragraph 3 of Article 1 (Personal Scope) does not apply to this Article, by virtue of the exceptions in subparagraph 4 a) of Article 1. Thus, for example, a U.S. citizen who is resident in Turkey may claim benefits in the United States under this Article.

Article 25 - MUTUAL AGREEMENT PROCEDURE

Article 25 provides for cooperation between the competent authorities of the Contracting States to resolve disputes that may arise under the Convention and to resolve cases of double taxation not provided for in the Convention. The competent authorities of the two States are identified in subparagraph 1 h) of Article 3 (General Definitions).

Paragraph 1

Paragraph 1 provides that when a person considers that the actions of one or both Contracting States result or will result for him in taxation that is not in accordance with the Convention, he may present his case to the competent authority of the State of which he is a resident or citizen. It is not necessary for a person first to have exhausted the remedies provided under the national laws of the Contracting States before presenting a case to the competent authorities. (On the other hand, it may be necessary for the person to present his case to competent authority in order to claim certain treatment under domestic law, such as the right to claim foreign tax credits in the United States. See, e.g., Rev. Rul. 92-75, 1992-2 C.B. 197.)

Paragraph 2

Paragraph 2 provides that if the competent authority of the Contracting State to which the case is presented judges the case to have merit, and cannot reach a unilateral solution, it shall seek agreement with the competent authority of the other State to avoid taxation not in accordance with the Convention. If agreement is reached under this provision, it is to be implemented, and any agreed refund made, even if implementation is otherwise barred by the statute of limitations or by some other procedural limitation, such as a closing agreement. Because subparagraph
2 a) of Article 1 (Personal Scope) provides that the Convention cannot operate to increase a taxpayer's liability, time or other procedural limitations can be overridden under this paragraph only for the purpose of making refunds and not to impose additional tax.

In order for time or procedural limitations to be overridden to give effect to a competent authority agreement, however, the competent authority of the second State (i.e., not the State to which the taxpayer first brings the case under paragraph 1) must have been notified of the existence of the case within five years from the end of the taxable year to which the case relates. The notification may be given by the competent authority of the other Contracting State, the taxpayer that has brought the case, or a relevant related party. The person giving notice may do so at any time after a case is known to exist, and need not wait until the case is fully resolved in the first-mentioned State. Thus, as soon as the presence of a case in the first State is known, the statute of limitations can be held open in the other State by giving notification.

Paragraph X of the Protocol makes clear that if a taxpayer is entitled to a refund from Turkey as a result of a mutual agreement under paragraph 2, such refund must be claimed within a period of one year from the time the taxpayer has been notified by the tax administration of the fact that the mutual agreement has resulted in a refund.

Paragraph 3

Paragraph 3 authorizes the competent authorities to seek to resolve difficulties or doubts that may arise as to the application or interpretation of the Convention. The paragraph includes a non-exhaustive list of examples of the kinds of matters about which the competent authorities may reach agreement. With the exception of subparagraph f), this list is purely illustrative of authority that is already implicitly given by the introductory sentence of paragraph 3. The competent authorities may, for example, agree to the same attribution of income, deductions, credits or allowances between an enterprise in one Contracting State and its permanent establishment in the other (subparagraph a)) or between related persons (subparagraph b)). These allocations are to be made in accordance with the arm's length principles of Article 7 (Business Profits) and Article 9 (Associated Enterprises). Agreements reached under these subparagraphs may include agreement on a methodology for determining an appropriate transfer price, and upon an acceptable range of results under that methodology. They may also agree to apply this methodology and range of results prospectively to future transactions and time periods (e.g., in the application of advance pricing agreements). The competent authorities may also agree on standards for determining when a relationship between related parties qualifies as a legitimate cost-sharing arrangement, and will not, therefore, if it conforms to those standards, be treated as a non-arm's-length transaction.

As indicated in subparagraphs c), d) and e), the competent authorities may also agree to settle a variety of conflicting applications of the Convention. Thus, they may agree to characterize particular items of income in the same way (subparagraph c)), to apply the same source rules to particular items of income (subparagraph d)) and to use a common meaning of a term (subparagraph e)).

Subparagraph f) of paragraph 3 authorizes the competent authorities to increase any dollar amounts referred to in the Convention to reflect economic and monetary developments. This refers to Article 17 (Artistes and Athletes). The rule would permit the competent authority, for example, to increase the $3,000 exemption threshold for entertainers after the Convention has been in force for some time and if inflation rates at that

time have been such as to make the $3000 unrealistically low in terms of the original objectives intended in setting the threshold; the competent authorities in this case could agree to a higher threshold without the need for formal amendment to the treaty and ratification by the Contracting States. This authority can be exercised, however, only to the extent necessary to restore the original objectives. Because of paragraph 2 of Article 1 (Personal Scope), this provision can be applied only to the benefit of taxpayers (i.e., only to increase thresholds, not to reduce them).

Subparagraph g) makes clear that the competent authorities can agree to the common application, consistent with the objective of avoiding double taxation, of procedural provisions of the internal laws of the Contracting States, including those regarding penalties, fines and interest. One of the more important elements that may be dealt with by the competent authorities under this subparagraph is the question whether interest will be charged on deficiencies and paid on refunds growing out of competent authority adjustments. A mismatching of the rules of the Contracting States on such matters can lead to unresolved double taxation (if the State making the initial adjustment charges interest on the deficiency but the State making the secondary, correlative, adjustment does not pay interest) or to a windfall benefit (if the former State does not charge interest, but the latter State pays interest). It would be useful for the competent authorities to be able to agree to a bilateral procedure regarding the charging and payment of interest in a manner that will avoid both double tax and windfalls. It might be agreed, as a general matter, for example, that interest will be charged by a Contracting State on deficiencies only when the other Contracting State pays interest on refunds. It might also be possible, even when a general solution cannot be found, for the competent authorities to agree on a procedure for particular cases. A similar difficulty may arise from currency fluctuations associated with adjustments to income. If exchange rates from different time periods (e.g., the time of the original transaction and the time of the adjustment) are used, the amount of the allocation of income and the correlative adjustment can be affected. Competent authorities may seek agreement on where the

risks of currency fluctuation should be borne and how to take account of that fluctuation in reaching a mutual agreement.

Finally, paragraph 3 authorizes the competent authorities to consult for the purpose of eliminating double taxation in cases not provided for in the Convention. This provision is intended to permit the competent authorities to implement the Convention in particular cases in a manner that is consistent with its expressed general purposes. It permits the competent authorities to deal with cases that are within the spirit of the provisions but that may not be specifically addressed. An example of such a case might be double taxation arising from a transfer pricing adjustment between two permanent establishments of a third-country resident, one in the United States, and one in Turkey. Since no resident of a Contracting State is involved in the case (both permanent establishments being residents of the third State), the Convention does not, by its terms, apply, but the competent authorities may, nevertheless, use the authority of the Convention to seek to prevent the double taxation. The provision is not, however, intended to authorize the competent authorities to resolve problems of major policy significance that normally would be the subject of negotiations between the Contracting States themselves.

Agreements reached by the competent authorities under paragraph 3 need not conform to the internal law provisions of either Contracting State.

Paragraph 4

Paragraph 4 provides that the competent authorities may communicate with each other directly for the purpose of reaching an agreement. This makes clear that the competent authorities of the two Contracting States may communicate without going through diplomatic channels. Such communication may be in various forms, including, where appropriate, through face-to-face meetings of representatives of the competent authorities.

Relation to other articles

By virtue of the exceptions in paragraph 4 a) of Article 1 (Personal Scope), this Article is not subject to the saving clause of paragraph 3 of that Article. Thus, rules, definitions, procedures, etc., that are agreed upon by the competent authorities under this Article may be applied by the Contracting States with respect to their citizens and residents even if they differ from the comparable internal law provisions. Similarly, as indicated above, internal law may be overridden by a Contracting State to provide refunds of tax to its citizens or residents under this Article.

Article 26 - EXCHANGE OF INFORMATION

Article 26 provides for the exchange of information between the competent authorities of the Contracting States. The information to be exchanged is that necessary for carrying out the provisions of the Convention or the domestic laws of the United States or Turkey concerning the taxes covered by the Convention. This article covers all taxes imposed at the national level by the two Contracting States.

Paragraph 1

Paragraph 1 states that information exchange is not restricted by Article 1 (Personal Scope). This means that information may be requested and provided under this Article with respect to persons who are not residents of either Contracting State. For example, if a third-country resident has a permanent establishment in Turkey, and that permanent establishment engages in transactions with a U.S. enterprise, the United States could request information with respect to that permanent establishment, even though it is not a resident of either Contracting State. Similarly, if a third-country resident maintains a bank account in Turkey, and the Internal Revenue Service has reason to believe that funds in that account should have been reported for U.S. tax purposes but have not been so reported, information can be requested from Turkey with respect to that person's account.

The taxes covered by the Convention for purposes of this Article constitute a broader category of taxes than those

referred to in Article 2 (Taxes Covered). As provided in paragraph 4, *for purposes of exchange of information*, covered taxes include all taxes imposed by the Contracting States. Exchange of information with respect to domestic laws is authorized insofar as the taxation is not contrary to the Convention. Thus, for example, information may be exchanged with respect to a covered tax, even if the transaction to which the information relates is a purely domestic transaction in the requesting State and, therefore, the exchange is not made for the purpose of carrying out the Convention.

Paragraph 1 also provides assurances that any information exchanged will be treated as secret, subject to the same disclosure constraints as information obtained under the laws of the requesting State. Information received may be disclosed only to persons, including courts and administrative bodies, concerned with the assessment, collection, enforcement or prosecution in respect of the taxes to which the information relates, or to persons concerned with the administration of these taxes. The information must be used by these persons in connection with these designated functions. Persons concerned with the administration of taxes in the United States include legislative bodies, such as the tax-writing committees of Congress and the General Accounting Office. Information received by these bodies is for use in the performance of their role in overseeing the administration of U.S. tax laws. Information received may be disclosed in public court proceedings or in judicial decisions.

It is contemplated that the Contracting States will utilize Article 26 to exchange information on a routine basis, on request in relation to a specific case, or spontaneously.

Paragraph 2

Paragraph 2 explains that the obligations undertaken in paragraph 1 to exchange information do not require a Contracting State to carry out administrative measures that are at variance with the laws or administrative practice of either State. Nor is either State obliged to supply information not obtainable under the laws or administrative practice of either State, or to disclose trade secrets or other information, the disclosure of

which would be contrary to public policy (ordre public). However, either Contracting State may, subject to the limitations of this paragraph and its internal law, provide information which it is not obligated to provide under this Article.

It is understood that information contained in banking documents, including, for example, banking documents pertaining to third persons involved in transactions with residents of either Contracting State, will be made available under this Article. Thus, any domestic laws regarding bank secrecy will not be invoked to prevent or undermine the effective exchange of information or documents under this Article.

Paragraph 3

Paragraph 3 provides that when information is requested by a Contracting State in accordance with this Article, the other Contracting State is obligated to obtain the requested information as if the tax in question were the tax of the requested State, even if that State has no direct tax interest in the case to which the request relates. The paragraph further provides that the requesting State may specify the form in which information is to be provided. The requested State should, if possible under its laws and administrative practice, provide the information in the form requested so as to permit the exchange to help carry out the purposes of the Article. If, for example, the requesting State intends to use the requested information in a judicial proceeding, it may wish to have the information in the form of depositions of witnesses or authenticated copies of original documents.

Paragraph 4

Paragraph 4 provides that the competent authorities may exchange information concerning every tax imposed by a Contracting State, not just the taxes listed in Article 2 (Taxes Covered). Customs duties are not considered taxes for this purpose.

Article 27 - MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Article 27 confirms that any fiscal privileges to which members of diplomatic missions or consular posts are entitled under general provisions of international law or under special agreements will apply notwithstanding any provisions to the contrary in the Convention. The agreements referred to include any bilateral agreements, such as consular conventions, that affect the taxation of diplomats and consular officials and any multilateral agreements dealing with these issues, such as the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. This Article is consistent with the provisions of paragraph 2 of Article 1 (Personal Scope).

The saving clause of paragraph 3 of Article 1 (Personal Scope) does not apply, by virtue of the exceptions in subparagraph 4 b) of Article 1, to override any benefits of this Article available to an individual who is neither a citizen of the United States nor has immigrant status there.

Article 28 - ENTRY INTO FORCE

The Convention is subject to ratification. Instruments of ratification will be exchanged at Ankara.

The Convention enters into force on the date on which the instruments of ratification are exchanged. Its provisions with respect to withholding taxes will have effect for amounts paid or credited on or after January 1 following the date on which the instruments are exchanged. With respect to other taxes, the provisions will have effect for taxable periods beginning on or after that same date. Thus, for example, if instruments of ratification are exchanged in November, 1996, the provisions of the Convention will take effect as of January 1, 1997 for withholding taxes on amounts paid or credited on or after that date, and for taxable periods beginning on or after January 1, 1997 for other taxes.

Article 29 - TERMINATION

The Convention shall remain in force indefinitely unless terminated by one of the Contracting States. Either State may terminate the Convention at any time after five years from the date on which it enters into force by giving at least six months prior notice through diplomatic channels. In that event, the Convention will cease to have effect with respect to taxes withheld at the source for amounts paid or credited on or after January 1 following the expiration of the six-month period, and with respect to other taxes for taxable periods beginning on or after January 1 following the expiration of the six-month period. Thus, for example, if notice of termination is given in July or later of a calendar year, the termination will not be effective as of the following January 1 but as of the second January 1 because the notice period must continue for at least six months.

Protocol

The provisions of the Protocol are an integral part of the Convention. Each has been described in the discussion of the article to which it refers.

Ukraine