tially similar to those covered by the convention.

The convention may be extended pursuant to this provision either in its entirety or with the necessary modifications. The extension is to be effected by a written notification of extension by the one country which is assented to by the other country in a written communication, which notification and communication are then to be ratified by each of the countries in accordance with their constitutional procedures.

Article 31. Entry into force

The proposed convention will enter into force 2 months following the exchange of the instruments of ratification. It will become effective generally for taxable years beginning on or after January 1, 1971. Reductions in U.S. withholding taxes under the proposed convention generally will apply to amounts received on or after the date the proposed convention enters into force. When the proposed convention enters into effect, the existing convention which was signed on June 13, 1949, and which was modified and supplemented on July 10, 1958, will terminate.

Article 32. Termination

The proposed convention will continue in force indefinitely but either country may terminate it at any time after 5 years from its entry into force by giving notice through diplomatic channels.

[21] SENATE OF THE UNITED STATES

IN EXECUTIVE SESSION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Convention Between the United States of America and the Kingdom of Norway for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Property, signed at Oslo on December 3, 1971 (Ex. D, 92-2).

Treasury Department Technical Explanation [1] of Proposed U.S.-Norway Income Tax Convention [2]

ARTICLE 1. TAXES COVERED

This article designates the taxes of the respective States which are the subject of the proposed Convention. With respect to the United States, the taxes included are the United States Federal income tax imposed by the Internal Revenue Code. This includes, for example, the surtax and would also include such taxes as the temporary surcharge which was in force from 1968 to 1970. However, the proposed Convention is not intended to apply to taxes which are in the nature of a penalty such as the taxes imposed under section 531 (accumulated earnings tax) and section 541 (personal holding companies tax) of the Internal Revenue Code.

With respect to Norway, the taxes included are (1) the national and municipal taxes on income (including contributions to the tax equalization fund) and capital; (2) the national dues on the salaries of nonresident artists; (3) the special tax in aid of developing countries; (4) the municipal tax on real property; and (5) the seamen's tax. See Article 16 and the discussion of that Article below for a statement of which of these taxes are covered by the United States foreign tax credit.

Individuals domiciled or permanently resident in Norway are normally liable for the national and municipal taxes on income from all sources, excluding for municipal tax purposes dividends received on shares held in Norwegian companies. An individual is considered to be a permanent resident of Norway for tax purposes if he resides in Norway for at least 6 months, even though such residence is only temporary. The national income tax is levied at a graduated rate with a maximum of 50 percent. Municipal authorities are permitted by national law to levy tax at a flat rate of between 17 and 20 percent, with the great majority of municipalities imposing the maximum 20 percent.

Nonresidents are subject to tax on income derived from all sources in Norway, in accordance with the provisions applicable to resident taxpayers. As regards the national income tax, however, tax is withheld at the source on dividends paid by Norwegian companies to nonresident shareholders. Further, in computing their tax liability nonresidents are not entitled to personal deductions available to residents, *e.g.*, tax-free child allowances.

As stated above, individuals resident in Norway are liable for the municipal income tax on total net income from all sources, domestic and foreign, with certain exceptions, *e.g.*, dividends received from Norwegian companies. Income from real property and from business associated with such property is taxed in the district in which the property is located. All other income is taxed in the district where the taxpayer resides. Nonresident individuals are subject to municipal taxes to the same extent as residents, with the exception that nonresidents are not entitled to the personal deductions available to residents.

The third income tax for which individuals are liable is the income tax on behalf of the tax equalization fund, the proceeds of which are divided among the municipalities. This tax is levied at a flat rate of 3 percent on income (reduced in the case of residents by personal deductions).

Companies resident in Norway (as

[1] It is the practice of the Treasury Department to prepare for the use of the Senate and other interested persons a Technical Explanation of the tax conventions which are submitted to the Senate for its advice and consent to ratification.

A new Income Tax Convention with Norway was signed December 3, 1971, and submitted by the President to the Senate on February 3, 1972. The Senate Committee on Foreign Relations held hearings on August 2, 1972, and this Technical Explanation was submitted on August 11, 1972. The Senate voted its advice and consent on August 11, 1972, and instruments of ratification were exchanged on September 29, 1972, the convention thereby entering into force two months thereafter on November 29, 1972.

[2] Page 669; Senate Executive Report No. 92-30, page 682.

525-

well as foreign companies or organizations which engage or participate in business or other commercial activity which is carried on or managed in Norway) are liable to taxation at both the national and municipal levels. The national tax on income is levied at the rate of 26.5 percent on the undistributed profits of Norwegian companies, distributed profits being subject to the national income tax only in the hands of the recipients. Companies are liable for the municipal income tax at the same flat percentage rate applied by municipalities on the income of individuals (usually the maximum rate of 20 percent). The tax is levied on the total profits of the company with no deduction for distributions (shareholders, however, are not taxed at the municipal level on dividend income).

For purposes of the national income tax on companies, the profits which must be retained to pay municipal taxes are treated as undistributed profits and are therefore subject to the national income tax. The result is that a company can never distribute all of its profits and is thus always subject to some national income tax liability.

In addition to the national and municipal income taxes, companies, like individuals, are subject to a flat 3 percent income tax for the tax equalization fund.

Companies and resident individuals are also liable for a special tax in aid of developing countries which is levied at a flat rate of 1.1 percent on income and profits.

Individuals are also liable for a municipal capital (net worth) tax applicable at a flat rate of from 0.4 to 1.0 percent of net worth, but the municipalities apply the maximum rate. Individuals, with the exception of nonresidents, are entitled to an exemption in the amount of Kr. 40,000 when determining their net worth tax liability. There is presently no national capital tax although the treaty includes a provision which would cover any such tax if introduced at a later date. Companies are not liable for the capital tax liability at the municipal level (and as indicated there is no national capital tax at present).

Article 1 of the proposed treaty also covers the national dues on the gross salaries of nonresident artists earned in Norway at the rate of 20 percent in respect of public entertainers employed by others, and 10 percent in respect of public entertainers arranging performances in which they participate in person. Also covered is the municipal tax on real property levied at various rates by municipalities. The tax on real property is deductible when computing the various national and municipal income taxes. The final tax covered by Article 1 is the seamen's tax which is levied in place of other income taxes on the income of seamen employed aboard ships owned or operated by Norwegians.

Pursuant to paragraph (2) of this article, the proposed Convention would also apply to taxes substantially similar to those enumerated which are imposed in addition to, or in place of, existing income taxes after the date of signature of this Convention.

For purposes of Article 25 (Nondiscrimination), the proposed Convention applies to taxes of every kind imposed at the national, state, or local level. For purposes of Article 28 (Exchange of Information) the proposed Convention applies to taxes of every kind imposed by the respective States at the national level. Thus, the United States will be able to obtain information with respect to the Interest Equalization Tax.

Article 2. GENERAL DEFINITIONS

This article sets out definitions of certain of the basic terms used in the proposed Convention. A number of important terms, however, are defined elsewhere in the proposed Convention.

Any term used in the proposed Convention which is not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of the State which is imposing the tax. However, in a situation where a term has a different meaning under the laws of Norway and the United States or where the meaning under the laws of one or both of the States is not clear, the competent authorities may agree on a uniform definition. This is made clear in paragraph (2) of this article. While treaties in the past did not specify the power of the competent authorities to resolve such differences in definitions, this power is nevertheless inherent in the authority set forth in the mutual agreement article of these treaties to resolve "difficulties and doubts."

This article defines geographical U.S. and geographical Norway to include their respective continental shelves. The addition of a definition of the continental shelf is intended to clarify what the Contracting States consider to be included within their respective jurisdictions to tax. The definition follows section 638 of the Internal Revenue Code and defines the United States continental shelf as the seabed and subsoil of the adjacent submarine areas over which the United States exercises exclusive rights in accordance with international law for the purpose of exploration and exploitation of the natural resources of such area, but only to the extent that the person, property, or activity to which the proposed Convention is to be applied is connected with such exploration or exploitation. For example, the income earned by a ship and its crew engaged in taking seismograph soundings on the United States continental shelf will be treated for tax purposes the same as the income from a comparable activity on the land of one of the States of the United States. A comparable definition is used in the case of Norway. The definition of the continental shelf in the case of the United States only includes the continental shelf surrounding the 50 States. Thus, for example, the continental shelf surrounding Puerto Rico is not included. If the treaty were extended

beyond the 50 States and the District of Columbia (see Article 30 Extension to Territories) the continental shelf of the extended areas could also be covered. The defined continental shelf is only part of the United States or Norway, as the case may be, in limited situations. It is included only to the extent that the person, property, or activity to which the Convention is being applied is connected with exploration or exploitation of the continental shelf. The phrase "connected with" does not require physical attachment to the continental shelf to be within the scope of the definition.

It should be noted, however, that the term "Norway" does not include Spitsbergen (including Bear Island), Jan Mayen, and the Norwegian dependencies outside Europe.

The terms "one of the Contracting States" or "the other Contracting State" are defined to mean the United States or Norway as the context requires. The term "State" means the United States, Norway, or any other national State.

The article also defines the terms "United States corporation" and "Norwegian corporation," the former being any corporation or any entity which is treated as a corporation under the tax laws of the United States and which is created or organized under the laws of the United States, any State, or the District of Columbia, and in the case of a "Norwegian corporation," any corporation or any entity which is treated as a corporation under the tax laws of Norway and which is created or organized under the laws of Norway.

In addition, this article also defines the term "international traffic" to include any voyage of a ship or aircraft operated by a resident of one of the Contracting States except where such voyage is confined solely to places within a Contracting State. Thus, for example, intercoastal shipping along the Atlantic coast of the United States would not be considered a voyage in international traffic.

ARTICLE 3. FISCAL RESIDENCE

This article sets forth rules for determining the "fiscal residence" of individuals, corporations, and other persons for purposes of the proposed Convention. Residence is important because, in general, only a resident of one of the Contracting States may qualify for the benefits of the Convention. This article is patterned generally after the fiscal domicile article of the OECD Model Convention.

The term "resident of Norway" means a Norwegian corporation as defined in Article 2 (General Definitions) and any person (other than a corporation or any entity treated under Norwegian law as a corporation) who is a resident of Norway for purposes of its tax. The term "resident of the United States" means a United States corporation as defined in Article 2 and any person (except a corporation or any other entity treated as a corporation for United States tax purposes) resident in the United States for purposes of its tax. The parenthetical language in the definitions of a resident is intended to make clear that a foreign corporation, or other entity treated as a foreign corporation for purposes of the tax law of one of the Contracting States, which is a resident of that Contracting State for certain purposes of its income tax law (see section 861 of the U.S. Internal Revenue Code) is not a resident of such Contracting State for purposes of the Convention.

The proposed Convention provides that a partnership, estate, or trust is treated as a resident of one of the Contracting States only to the extent that the income derived by such person is subject to tax in such Contracting State as the income of a resident. This language is similar to that found with respect to the United States in the Income Tax Convention between the United States and Belgium, signed July 9, 1970, 1973-8 I.R.B. 26. For example, under United States law a partnership is never, and an estate or trust is often not, taxed as such. Under the proposed Convention, in the case of the United States, income received by a partnership, estate, or trust will not qualify for the benefits of the Convention unless such income is subject to tax in the United States. Thus, in effect, the status of income which is subject to tax only in the hands of the partners or beneficiaries, will be determined by the residence of such partners or beneficiaries. With respect to income taxed in the hands of the estate or trust, the residence of the estate or trust is determinative.

An individual who is a resident of both Contracting States under the rules of domestic law employed by such States for determining residence will be deemed a resident of the State in which he has his permanent home, his center of vital interests (closest economic and personal relations), his habitual abode, or his citizenship, in the order listed. If the issue is not settled by these tests, the competent authorities will decide by mutual agreement the one State of which he will be considered to be a resident. For purposes of paragraph (2) of this article, a permanent home is the place where an individual dwells with his family. An individual who is deemed to be a resident of one Contracting State and not a resident of the other Contracting State by reason of the provisions of paragraph (2) of this article shall be deemed to be a resident only of the first-mentioned Contracting State for all purposes of the proposed Convention, including Article 22 (General Rules of Taxation). For example, even if an individual treated as a resident of Norway under the proposed Convention is also considered to be a resident of the United States under the laws of the United States, such individual would continue to receive the exemptions and special benefits available only to Norwegian residents.

ARTICLE 4. PERMANENT ESTABLISHMENT

This article defines the term "per-

manent establishment." The existence of a permanent establishment is, under the terms of the proposed Convention, a prerequisite for one State to tax the industrial or commercial profits of a resident of the other State. The concept is also significant in determining the applicability of other provisions of the proposed Convention, such as Article 8 (Dividends), Article 9 (Interest), Article 10 (Royalties), and Article 12 (Capital Gains). The definition of "permanent establishment" is a modernized version of the definition found in some of our older treaties, including the 1949 Convention with Norway. The new definition is similar to the definition found in our French and Belgian Conventions.

The term "permanent establishment" means "a fixed place of business through which a resident of one of the Contracting States engages in industrial or commercial activity." Illustrations of the concept of a fixed place of business include a branch, an office, a factory, a workshop, a warehouse, a place of extraction of natural resources, or a building site or construction or installation project which exists for more than 12 months. The construction project rule is a physical presence test under which the resident must be actively engaged in the project during the 12-month period. As a general rule, any fixed facility through which an individual, corporation, or other person conducts industrial or commercial activity will be treated as its permanent establishment unless it falls in one of the specific exceptions described below. Our recent treaties have included a "seat of management" as an illustration of a fixed place of business.

This article specifically provides that a permanent establishment does not include a fixed place of business of a resident of one of the Contracting States which is located in the other Contracting State if it is used only for one or more of the following—(1) the use of facilities for the storage, display, or delivery of goods or merchandise belonging to the resident; (2) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of storage, display, or delivery; (3) the maintenance of a stock of goods or merchandise belonging to the resident for the purpose of processing by another person; (4) the maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or the collecting of information, for the resident; (5) the maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for scientific research, or for similar activities which have a preparatory or auxiliary character, for the resident; or (6) the maintenance of a building site or construction or installation project which does not exist for more than 12 months. The building site or construction or installation project exception is merely a clarification of the rule that such an activity for more than 12 months is a permanent establishment and, accordingly, such an activity for 12 months or less is not a permanent establishment. These exceptions are cumulative and a site or facility used solely for one or more of these purposes will not be considered a permanent establishment under the proposed Convention. The exception for cases where goods of a resident are processed by another person includes cases where the resident furnishes the other person with the tools and dies necessary for the processing.

Notwithstanding the other provisions of this article a person will be considered to have a permanent establishment if he engages in business through an agent, other than an independent agent, who either has and regularly exercises authority to conclude contracts in the name of such person unless the agent only exercises such authority to purchase goods or merchandise, or who maintains substantial equipment or machinery for more than 12 months.

With respect to an independent agent, the proposed Convention also provides that a resident of one State will not be deemed to have a permanent establishment in the other State if such resident engages in industrial or commercial activity in such other State through an independent agent, such as a broker or general commission agent, if such agent is acting in the ordinary course of its business.

The determination of whether a resident of one State has a permanent establishment in the other State is to be made without regard to any control relationship of such resident with respect to a resident of the other State or with respect to a person which engages in industrial or commercial activity in that other State (whether through a permanent establishment or otherwise).

Although this article is generally drafted with reference to a resident of one of the States engaging in industrial or commercial activity in the other State, for certain purposes the proposed Convention deals with a nonresident engaging in industrial or commercial activity in one of the States or a resident of one of the States engaging in industrial or commercial activity in a third State. For these purposes, the principles set forth in this article are to be applied in determining whether there is a permanent establishment.

Article 5. BUSINESS PROFITS

This article sets forth the typical treaty rule that industrial or commercial profits of a resident of one State are taxable in the other State only if the resident has a permanent establishment in that other State. Where there is a permanent establishment only the profits attributable to the permanent establishment can be taxed by that other State. For purposes of Article 23 (Relief from Double Taxation) which, among other things, provides that a foreign tax credit will be allowed by the United States, such profits are considered to be from

sources within the State in which the permanent establishment is located.

While under the existing Norwegian Convention, as under most of the old United States Conventions negotiated prior to the income tax treaty between France and the United States signed in 1967, 1968-2 C.B. 691, industrial or commercial profits are not taxed in the absence of a permanent establishment; once there is a permanent establishment the existing Convention, as did such old Conventions, provides generally that the provisions reducing the tax rate on interest, dividends, and royalties are not applicable. This rule is known as the "force of attraction" principle and is replaced in the proposed Convention, as in our other recent Conventions, with the effectively connected concept. Under the new approach, only those interests, dividends, and royalties which are effectively connected with the permanent establishment are taxable as part of the industrial or commercial profits and do not benefit from the reduced rate.

In determining the proper attribution of industrial or commercial profits under the proposed Convention, paragraph (2) of this article provides generally that a permanent establishment will be treated as an independent entity and considered as realizing the profits which would be realized if the permanent establishment dealt with the resident of which it is a permanent establishment on an arm's length basis. Under paragraph (3), expenses, wherever incurred, which are reasonably connected with profits attributable to the permanent establishment, including executive and general administrative expenses, will be allowed as deductions by the State in which the permanent establishment is located in computing the tax due to such State. However, it is not necessary to allow a profit to the head office for ancillary services furnished to the permanent establishment as long as the permanent establishment is allowed to deduct the allocable costs incurred by the head office.

Paragraph (4) of this article provides that the mere purchase of goods or merchandise in a State by the permanent establishment, or by the resident of which it is a permanent establishment, for the account of such resident will not cause attribution of profits to such permanent establishment. It is not intended that paragraph (2) of this article should limit paragraph (4) to any extent. Thus, attribution of industrial and commercial profits under paragraph (2) will be made with full regard to the provisions of paragraph (4).

This Convention departs from the form used in some of our more recent conventions by first defining the term "industrial or commercial activity" and then defining the term "industrial or commercial profits" to include income derived from the industrial or commercial activity. In spite of the difference of approach, the term "industrial or commercial profits" has a meaning generally similar to that in our other recent treaties.

The term "industrial or commercial activity" is defined by setting forth several examples of activities which constitute the active conduct of a trade or business, including, *inter alia,* insurance activities, agricultural activities, fishing or mining activities, the operation of ships or aircraft, the furnishing of services, the rental of tangible personal property, and the rental or licensing of motion picture films or films or tapes used for radio or television broadcasting. The term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

The term "industrial or commercial profits" includes, in addition to income from industrial or commercial activity, income derived from real property and natural resources and dividends, interest, royalties (as defined in paragraph (2) of Article 10 (Royalties)), and capital gains but only if the property or rights giving rise to such income, dividends, interest, royalties, or capital gains is effectively connected with a permanent establishment.

Paragraph (6)(b) of this article also contains a rule for determining whether property or rights are effectively connected with a permanent establishment. Factors to be taken into account include whether the rights or property are used in or held for use in carrying on industrial or commercial activity through a permanent establishment and whether the activities carried on through such permanent establishment were a material factor in the realization of the income derived from such property or rights.

This article is substantially similar to the business profits article of the OECD Model Convention except that the Model Convention does not contain a definition of either the term "industrial or commercial activity" or "industrial or commercial profits," nor does the Model Convention contain a rule dealing with whether property or rights are effectively connected with a permanent establishment.

Article 6. SHIPPING AND AIR TRANSPORT

This article provides that, notwithstanding Article 5 (Business Profits), income which a resident of the United States derives from the operation in international traffic of ships or aircraft registered in either of the Contracting States or in a State with which Norway has an income tax convention exempting such income shall be exempt from tax in Norway.

This article provides a similar exemption from United States tax for income derived by a resident of Norway, or an international consortium of which a resident of Norway and residents of other States with which the United States has an income tax convention exempting such income are the sole members, from the operation in international traffic of ships or aircraft. The reference to a consortium is

intended to ensure that the exemption applies to Scandinavian Airlines System (SAS), an entity in the nature of a partnership which was created jointly by the legislatures of Norway, Sweden and Denmark. SAS is known as a consortium in those countries and thus the consortium is specifically referred to in this article. The exemption applies to the income of the consortium in its entirety because, in addition to the present Convention, the United States income tax conventions with Denmark and Sweden provide similar exemptions to residents of those States.

Gains from the sale, exchange, or other disposition of ships or aircraft operated in international traffic are governed by the provisions of paragraph (2) of Article 12 (Capital Gains).

In addition, letters were exchanged covering several specific situations that might arise under Article 6. It was agreed that income derived by a resident engaged in the operation in international traffic of ships or aircraft from the use, maintenance, and lease of containers and related equipment in connection with such operations is exempt as falling within the scope of this article. It was agreed that income derived by a resident engaged in the operation in international traffic of ships or aircraft from a full or bareboat charter to another person is exempt as falling within the scope of this article. Further, it was agreed that income derived by a partner who is a resident from an interest in a partnership which derives its income from the operation in international traffic of ships or aircraft shall be taxable only in the Contracting State in which such partner is a resident.

It was also agreed in the exchange of letters that all income earned by SAS, Inc. (Scandinavian Airline System, Inc., a New York corporation) from the operation in international traffic of aircraft would be treated as income of SAS, the consortium whose constituent corporate members own the stock of SAS, Inc. SAS, Inc. was created and is operated as an entity apart from SAS to satisfy U.S. regulations regarding foreign airlines, which SAS as a consortium could not meet. SAS, Inc. is a conduit for SAS with regard to receipts and its expenses are guaranteed by SAS. Therefore the income of SAS, Inc. will be taxed no differently under the Convention than if it were earned directly by SAS.

Article 7. RELATED PERSONS

This article complements section 482 of the Internal Revenue Code of 1954 and confirms the power of each government to allocate items of income, deduction, credit, or allowance in cases in which a resident of one State is related to any other person if such related persons impose conditions between themselves which are different from conditions which would be imposed between independent persons. A similar provision is contained in the OECD Model Convention.

Provision is made in Article 27 (Mutual Agreement Procedure) for consultation and agreement between the two States where an allocation by either State results or would result in double taxation.

Article 8. DIVIDENDS

The existing Convention provides that dividends derived from sources within one State by a resident of the other State not having a permanent establishment in the former State (other than certain permanent establishments of the construction type) will be subject to tax in the former State at a rate not in excess of 15 percent. However, it provides for a 5 percent rate with respect to intercorporate dividends if, for the 12 months immediately preceding the date of payment, the recipient owns more than 50 percent of the stock of the paying corporation either alone or in association with not more than three other corporations of such other State, provided that each such corporation of the other State owns 10 percent or more of the stock of the payer corporation and, generally, if not more than 25 percent of the gross income of the paying corporation for such period consists of dividends and interest.

The proposed Convention abandons the "force of attraction" concept in the existing Convention by providing that the reduced rates of tax on dividends are denied only if the shares with respect to which the dividends are paid are effectively connected with a permanent establishment which the recipient has in the State of source. The elimination of the "force of attraction" principle will make uniform the rate of tax levied on dividend income of a resident of one State from sources within the other State unless such income is effectively connected with a permanent establishment in the State of source. In those cases where the shares with respect to which the dividends are paid are so effectively connected, the dividends may be taxed as industrial or commercial profits under Article 5 (Business Profits). Income which is so effectively connected may be taxed at the normal rates aplicable to such income in the State of source.

The proposed Convention continues the 15-percent rate with respect to dividends on portfolio investments but provides a maximum rate of 10 percent with respect to intercorporate dividends if, during the part of the paying corporation's taxable year which precedes the date of payment of the dividend and during the whole of its prior taxable year, the recipient owns 10 percent or more of the voting shares of the paying corporation and, generally, if not more than 25 percent of the gross income of the paying corporation for such prior taxable year consists of dividends and interest.

This Convention also contains a rule similar to that of our recent Belgian Convention. Specifically, the provision of paragraph (4) of this article which exempts dividends paid by a corporation of one of the Contracting States to a person other than a

resident of the Contracting State (and in the case of dividends paid by a Norwegian corporation, to a person other than a citizen of the United States) from tax in that other Contracting State. This rule does not apply if the recipient of the dividends has a permanent establishment in that other Contracting State and the shares with respect to which the dividends are paid are effectively connected with such permanent establishment.

The dividend article of the proposed Convention is patterned generally after the OECD Model Convention except as follows: With respect to the qualification for the 10-percent intercorporate dividend rate, a 10-percent ownership requirement is substituted for the 25-percent ownership requirement of the OECD draft. The 10-percent rule conforms to the United States concept of direct investment especially as expressed in section 902 of the Internal Revenue Code. The proposed Convention also limits to 25 percent the amount of passive income which may be derived by a corporation paying dividends which qualify for the intercorporate dividend rate. This provision, which is included in most conventions to which the United States is a party but which is not found in the OECD draft, reflects the policy that the reduced rate should not be made available to dividends paid by certain holding companies. Dividends and interest received by the payer corporation from 50 percent or more owned subsidiaries are not considered passive income.

Article 9. INTEREST

The proposed Convention retains the basic provision of the existing Convention that interest derived from sources within one of the Contracting States by a resident of the other Contracting State shall be exempt from tax by the first-mentioned Contracting State.

Interest is defined generally as income from any kind of debt-claim or any income treated as interest under the tax law of the State of source. In cases in which excessive interest is paid by reason of a special relationship between the payor and the recipient, the provisions of the interest article do not apply to the excess part of the payments. Excess interest payments may be taxed according to the law of the State from which the interest is derived. Thus, in the case of excess interest derived from the United States, the excess interest may be taxed as a dividend.

The exemption from taxation provided by paragraph (1) does not apply if the recipient of the interest, being a resident of one of the Contracting States, has a permanent establishment in the State of source and the indebtedness giving rise to the interest is effectively connected with such permanent establishment. In such a case, the provisions of Article 5 (Business Profits) apply.

Interest paid by a resident of one of the Contracting States to a person other than a resident of the other Contracting State (and in the case of interest paid by a Norwegian corporation, to a person other than a citizen of the United States) is exempt from tax by the other Contracting State unless the interest is effectively connected with a permanent establishment of the recipient maintained in the other Contracting State, or the interest is treated as income from sources within the other Contracting State under paragraph (2) of Article 24 (Source of Income).

Article 10. ROYALTIES

The existing Convention provides that royalties derived from sources within one of the Contracting States by a resident of the other Contracting State shall be exempt from tax by the former Contracting State. The proposed Convention continues this exemption for royalties.

The term "royalties" is defined to include (a) payment of any kind made as consideration for the use of, or the right to use, copyrights of literary, artistic, or scientific works (but not including copyrights of motion picture films or films or tapes used for radio or television broadcasting), patents, designs, models, plans, secret processes or formulae, trademarks, or other like property or right, or knowledge, experience, or skill (know-how) and (b) gains derived from the sale or exchange of such rights or property, but only if payment is contingent on productivity, use, or disposition of the property. If the payments are not so contingent, the provisions of Article 12 (Capital Gains) applies.

The provisions of this article do not apply if the recipient of a royalty has a permanent establishment in the State of source and the rights or property giving rise to the royalty is effectively connected to such permanent establishment. In such a case, the royalty may be taxed as industrial or commercial profits under Article 5 (Business Profits). Thus, the "force of attraction" principle is also abandoned with respect to royalties.

If excessive royalties are paid because the payor and the recipient are related, the provisions of this article apply only to so much of the royalty as would have been paid to an unrelated person. The excess payment may be taxed according to its own law by the Contracting State from which the royalty is derived.

Article 11. INCOME FROM REAL PROPERTY

This article provides that a resident of one State may be subject to tax in the other State on income from real property and royalties in respect of natural resources if the property or natural resource is located in such other State. The existing Convention provides that a resident of one State may be subject to tax on such income or royalties by the other State only if such resident has a permanent establishment in the other State or if such income or royalties constitute industrial or commercial profits. This

article does not (as does the existing Convention) provide for an election by the resident to compute his tax on such income on a net basis since, for example, under the internal laws of the United States this can be done. See sections 871(d) and 882(d) of the Internal Revenue Code. The income referred to in this article includes gain from the sale or exchange of real property or natural resource rights, but does not include interest on mortgages and similar instruments. The latter type of income is covered by Article 9 (Interest).

This article sets forth the same general rule as that found in the OECD Model Convention except that the Model Convention is not restricted to real property but instead deals with the broader term "immovable property."

Article 12. CAPITAL GAINS

The proposed Convention provides that gains derived in one State from the sale or exchange of stock, securities, commodities, or other capital assets by a resident of the other State shall be exempt from tax by the State of source. However, the exemption does not apply if (1) the gain derived by a resident of one State arises out of the sale or exchange of property described in Article 11 (Income from Real Property) which is situated within the other State, (2) the recipient of the gain has a permanent establishment in that other State and the property giving rise to the gain is effectively connected with such permanent establishment, or (3) the recipient of the gain, being an individual resident of a State, either is present in the other State for a period or periods aggregating more than 183 days in the taxable year or maintains, for a period or periods aggregating 183 days or more during the taxable year, a fixed base in the other State with which the property giving rise to such gain is effectively connected.

Notwithstanding the provisions of Article 5 (Business Profits) and the first paragraph of this article, gains derived by a resident of one of the Contracting States from the sale, exchange, or other disposition of ships or aircraft which are operated in international traffic are exempt from tax by the other Contracting State. In addition, Norway retains the right, notwithstanding the provisions of paragraph (1) of this article, to tax gains derived by an individual from the sale or exchange of stock consisting of at least a 25-percent interest in a Norwegian corporation if such individual was a national and a resident of Norway at any time during the 5-year period immediately preceding such sale or exchange. Gains arising from property which is effectively connected with a permanent establishment may be taxed as industrial or commercial profits under Article 5 (Business Profits). Gains on real property are subject to the provisions of Article 11 (Income from Real Property) which permits taxation of such gains by the State in which the real property is situated.

Article 13. INDEPENDENT PERSONAL SERVICES

The existing Convention combines the rules pertaining to independent and dependent personal services into one article.

The proposed Convention generally deals with personal services in two articles and creates a distinction based upon whether the services are independent or dependent personal services. The proposed Convention also provides a special rule for independent individuals who are artists or athletes. A doctor or lawyer, for example, typically renders independent personal services. Also an entertainer who under common law concepts is an independent contractor is considered as rendering independent personal services.

Generally, under Article 13 of the proposed Convention, income earned by an individual resident of one State from independent personal services performed in the other State may not be taxed in that other State. However, such income may be subject to tax in the State of source (*i.e.*, where the services are performed) if the recipient is present in that State for a period or periods aggregating 183 days or more in the taxable year or if the individual maintains a fixed base in that other State for a period or periods aggregating 183 days or more in the taxable year, but only to the extent of so much of the income as is attributable to such fixed base.

Independent personal services means services performed by an individual for his own account where he receives the proceeds or bears the losses arising from such services. Commercial, industrial, or agricultural activities are not considered independent personal services and the income therefrom is taxed as industrial or commercial profits under Article 5 (Business Profits).

Under the fixed base concept if a physician, resident in one State, has an office available in the other State for a period aggregating 183 days or more during the taxable year, the income he earns from the performance of services within the other State will be subject to tax in that other State regardless of whether he is physically present in that other State for 183 days or more during the taxable year and regardless of whether others make use of this office in his absence.

An individual who derives income from independent personal services as a public entertainer is nevertheless subject to tax in the other State if his stay in such State exceeds 90 days during the taxable year or his income is in excess of $3,000, or its equivalent in Norwegian kroner, in the aggregate during the taxable year.

Article 14. DEPENDENT PERSONAL SERVICES

Generally, under the proposed Convention income from labor or personal services as an employee may be taxed

in the State in which such labor or personal services are performed (except as provided in Articles 15 (Teachers), 16 (Students and Trainees), 17 (Governmental Functions), and 18 (Private Pensions and Annuities)). However, such income will be exempt from tax in the State of source if (1) the recipient, being a resident of one of the Contracting States, is present in the State of source for a period or periods aggregating less than 183 days during the taxable year; (2) the recipient is an employee of a resident of the State of his residence (or of a permanent establishment located in the State of his residence maintained by a resident of a State other than that State); and (3) the remuneration is not borne as such by a permanent establishment which the employer has in the State of source. Thus, the rule applicable to dependent personal services is similar to that contained in the existing Convention. The proposed Convention also adds a rule that income from labor or personal services performed by a resident of one of the Contracting States as an employee aboard ships or aircraft operated by a resident of the other Contracting State in international traffic or in fishing on the high seas may be taxed by that other Contracting State if such employee is a member of the regular complement of the ship or aircraft.

This article of the proposed Convention is substantially similar to the OECD Model Convention except that, under the proposed Convention, an individual temporarily present in one State who is an employee of a permanent establishment located in the other State and maintained by a corporation of the first-mentioned State will be exempt from taxation by the first-mentioned State on wages earned while temporarily present therein if the other requirements are met.

Article 15. TEACHERS

The existing Convention provides that teachers who are residents of one of the Contracting States and who are temporarily present in the other Contracting State for a period not exceeding 2 years for the purpose of teaching at an educational institution are exempt from taxation in such other Contracting State on remuneration received for such teaching.

The proposed Convention continues with minor modification the 2-year exemption period for visiting teachers. This exemption applies to an individual who is a resident of and residing in one of the Contracting States at the time he is invited by the other Contracting State or by a recognized educational institution of the other Contracting State to teach or do research in the other Contracting State and temporarily comes to such other Contracting State primarily in order to engage in such teaching or research. Since the period of temporary visit may be of such duration that an individual may lose his status as a resident of the State of which he was a resident, the article makes clear that the individual need only be a resident of such State at the beginning of his visit. The exemption is for the individual's income from personal service for teaching or research at such recognized educational institution. For purposes of the United States, the term "recognized" will be construed to mean accredited. However, the exemption does not apply to income from research undertaken not in the public interest but primarily for the benefit of a specific person or persons. If the individual's visit exceeds a period of 2 years from the date of his arrival, the exemption applies to the income received by the individual before the expiration of such 2-year period.

Article 16. STUDENTS AND TRAINEES

Under the existing Convention, remittances received by a resident of one of the Contracting States who is temporarily residing in the Contracting State for the purposes of study or acquiring business or technical experience shall not be taxable in such other Contracting State if such remittances are made to him from sources outside such other Contracting State for the purposes of his maintenance or studies. The OECD Model Convention includes a similar provision.

The proposed Convention expands the exemption available to students by providing that an individual who is a resident of one State at the time he visits the other State and who is temporarily present in the other State for the purpose of studying at a university or other accredited institution, or securing training for qualification in a profession, or of studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary, or educational institution is exempt from tax in the host State on:

(1) Gifts from abroad for his maintenance and study;

(2) The grant, allowance, or award;

(3) Income from personal services performed in the host State in the aggregate amount not in excess of $2,000 (or its equivalent in Norwegian kroner) for any taxable year. Under this article and paragraph (1) of Article 15 (Teachers), these exemptions continue only for such period of time as may be reasonable or customarily required to effectuate the purpose of his visit but in no event may an individual have the benefit of this provision and the provisions of Article 15 (Teachers) for more than a total of 5 taxable years from the date of his arrival.

In addition, a resident of one State employed by or under contract with a resident of that State who, at the time he is a resident of that State, becomes temporarily present in the other State for the purpose of studying or acquiring technical, professional, or business experience from a person other than a resident of the first-mentioned State, is exempt from tax in the host State on income not in excess of $5,000 (or

its equivalent in Norwegian kroner) from personal services. The individual is exempt for a period of 12 consecutive months which period commences with the first month in which he begins working or receives compensation. The exemption applies only to compensation from abroad paid by such individual's employer for his services rendered during the period of his temporary presence.

Also, an individual who is a resident of one State who, at the time he is a resident of that State, becomes temporarily present in the host State as a participant in a government program of the host State for the primary purpose of training, research, or study is entitled to an exemption by the host State with respect to his income from personal services relating to such training, research, or study performed in the host State in an amount not in excess of $10,000 (or its equivalent in Norwegian kroner). To be entitled to this exemption the program must be a program which does not exceed 1 year in duration. If this qualification is met, then the income from personal services received with respect to such program is exempt.

Article 17. GOVERNMENTAL FUNCTIONS

The existing Convention exempts compensation including pensions paid by one of the States or a political subdivision or territory thereof to an individual (other than a citizen of the other Contracting State who is not also a citizen of the former Contracting State) from taxation by that other Contracting State. The article covering governmental functions in the existing Convention also covered private pensions and annuities derived from within one of the Contracting States and paid to individuals residing in the other Contracting State. Private pensions and annuities are now covered in Article 18 (Private Pensions and Annuities) of the proposed Convention. With regard to compensation and pensions paid by one of the States, the proposed Convention continues the exemption but adds a specification that the compensation must be paid in connection with the discharge of functions of a governmental nature.

Article 18. PRIVATE PENSIONS AND ANNUITIES

The existing Convention provides that private pensions and annuities derived from sources within one State by an individual resident of the other State are exempt from tax in the State of source. The proposed convention continues the existing rule by providing that pensions and other similar remuneration paid in consideration of past employment, other than pensions coming within the scope of Article 17 (Governmental Functions), and annuities received by a resident of a State will be taxable only in the State of residence.

The proposed Convention also provides that alimony paid to a resident of a State will be taxable only in the State of residence. A United States resident making alimony payments to a Norwegian resident may deduct such payments when computing his United States tax liability (unless section 71(b) or 682 of the United States Internal Revenue Code applies).

The proposed Convention provides, in addition, that child support payments made by a resident of one of the States to an individual resident of the other State shall be exempt from tax in that other State.

The term "pensions" is defined as including periodic payments made by reason of retirement or death in consideration for services rendered, or by way of compensation for injuries received, in connection with past employment. The term "annuities" is defined as including a stated sum paid periodically at stated times during life, or during a specified number of years under an obligation to make the payments in return for adequate and full consideration (other than services rendered). The term "alimony" means periodic payments made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement, which is taxable to the recipient under the internal laws of the State of his residence. The term "child support payments" means periodic payments for support of a minor child made pursuant to a decree of divorce, separate maintenance agreement, or support or separation agreement.

Article 19. SOCIAL SECURITY PAYMENTS

This article provides that social security payments paid by one State to an individual who is a resident of the other State will be taxed only in the first-mentioned State. Also included under this article are other public pensions such as railroad retirement benefits. Neither the existing Convention nor the OECD Model Convention contains a comparable provision.

Article 20. INVESTMENT OR HOLDING COMPANIES

This article denies the benefits of the dividends, interest, royalties, and capital gains articles to a corporation of one of the States deriving such income from sources within the other State if (1) such corporation is entitled to special tax benefits which result in the tax imposed on such income being substantially less than the tax generally imposed on corporate profits in such State, and (2) 25 percent or more of the capital of the corporation is owned directly or indirectly by one or more persons who are not individual residents of such State, or in the case of a Norwegian corporation, are citizens of the United States.

The purpose of this article is to deal with potential abuse which could occur if one of the States provided preferential rates of tax for investment or holding companies. In such a case, residents of third countries could organize a corporation in the State extending the preferential rates for the purpose of making investments in the other State. The combination of low

tax rates in the first State and the reduced rates or exemptions in the other State would enable the third-country residents to realize unintended benefits.

ARTICLE 21. CAPITAL TAXES

The existing Convention does not contain an article relative to capital taxes since they are not one of the taxes covered by the Convention. The proposed Convention provides, on a reciprocal basis, that a resident of one State shall be exempt from capital tax by the other State on all nonbusiness property (excluding real property) and on property (other than real property referred to in Article 11 (Income from Real Property)) pertaining to the operation of ships and aircraft.

Since the United States does not impose a separate capital (net wealth) tax, this article represents a unilateral concession by Norway. In the absence of a convention, individuals who are not residents of Norway would, nevertheless, be subject to the municipal capital tax with respect to their net wealth situated in Norway. The minimum rate is 0.4 percent and the maximum rate is 1.0 percent but the municipal districts in Norway apply the maximum rate. Since 1969, there has been no national capital tax in Norway.

ARTICLE 22. GENERAL RULES OF TAXATION

The proposed Convention sets forth in a separate article the general rules of taxation applicable under the Convention. The general rules applicable under the proposed Convention are as follows:

A resident of one State may be taxed by the other State only on income from sources within that other State (including industrial or commercial profits attributable to a permanent establishment located in that other State), subject to the limitations set forth in this Convention. For this purpose, the sources rules contained in Article 24 of the proposed Convention are to be applied.

The proposed Convention continues the general rule (also found in our new French, Finnish, and Trinidad and Tobago Conventions) that the Convention will not affect in any manner any exclusion, exemption, deduction credit, or other allowance now or hereafter accorded by the laws of a State in the determination of a tax imposed by that State, or by any other agreement between the Contracting States. Even though the OECD Model Convention does not contain a comparable provision, this rule reflects the well-established principle that a Convention will not have the effect of increasing the tax burden on residents of the signatory countries. This rule represents the position of the United States under all conventions to which it is a party except that, to the extent a convention specifically provides, it may be necessary to waive certain rights as a condition to claiming more advantageous treaty benefits.

The proposed Convention also contains the traditional savings clause under which the United States reserves the right to tax its citizen and residents as if the Convention had not come into effect. However, the savings clause does not apply in several cases in which its application would contravene policies reflected in the proposed Convention. Thus, the savings clause does not affect the benefits relating to social security payments, relief from double taxation, nondiscrimination, diplomatic and consular officers, or mutual agreement procedure. Moreover, the savings clause will not deny the benefits of the proposed Convention to teachers, researchers, students, trainees, or persons performing governmental functions unless, in the case of such benefits conferred by the United States, such individuals are citizens of the United States or have immigrant status in the United States. The OECD Model Convention does not contain a savings clause because it is oriented toward the residence principle of taxation. Another general rule of taxation is that Norway may impose its national tax on its diplomatic and consular officers as if the proposed Convention had not come into effect. Thus, it is clear that for purposes of applying the Norwegian national tax, Norwegian diplomats in the United States are not United States residents.

The United States also reserves the right to impose its personal holding company tax in any taxable year except in cases in which a Norwegian corporation is wholly owned, directly or indirectly, by one or more individuals who are residents of Norway, and not citizens of the United States, for that entire taxable year. The United States may not impose its accumulated earnings tax in any taxable year on a Norwegian corporation unless such corporation is engaged in trade or business in the United States through a permanent establishment at some time during that taxable year. The limitations on the right of the United States to tax in these cases are not substantially greater than those found in the Internal Revenue Code.

ARTICLE 23. RELIEF FROM DOUBLE TAXATION

Under the existing Convention the United States provides relief from double taxation by allowing a credit for Norwegian taxes in accordance with the rules set forth in section 131 of the Internal Revenue Code of 1939.

The proposed Convention employs a similar method of avoiding double taxation in providing that in accordance with the provisions of the law of the United States (as it may be amended from time to time without changing the principles thereof) credit will be allowed for the appropriate amount of Norwegian tax payable by a citizen or resident of the United States but not in excess of the limitations provided by United States law for the taxable year. The proposed

credit article thus permits a United States citizen or resident to use either the per-country limitation or the overall limitation under section 904 of the Internal Revenue Code of 1954. Except for the special source rules provided by the proposed Convention, this provision does not add to the rights which a United States citizen or resident has under the Internal Revenue Code now in effect to the foreign tax credit, but is for the purpose of giving treaty recognition to such rights. Paragraph (1) of this article also makes clear that all Norwegian taxes listed in Article 1 (1)(b) (Taxes Covered), other than national and municipal taxes on capital and real property, will be considered income taxes for purposes of the United States foreign tax credit.

In the case of Norway, paragraph (2) of this article generally provides an exemption from Norwegian tax for a Norwegian resident with respect to income or property which under the Convention may be taxed only by the United States (or which is exempt from United States tax under Article 15 (Teachers) or Article 16 (Students and Trainees)). In addition Norway will allow a credit against Norwegian tax for any United States tax paid by Norwegian residents with respect to income which under the Convention may be taxed by both States. Thus, the credit will apply with respect to the United States withholding tax on dividends paid by U.S. corporations to Norwegian residents, the U.S. tax on wages or salaries paid to Norwegians for personal services performed as an employee in the United States, and any U.S. tax paid by United States citizens who are Norwegian residents. Also, a Norwegian corporation owning at least 10 percent of the voting power of a United States corporation from which it receives dividends in a taxable year will be allowed a credit for the appropriate amount of United States tax paid by the United States corporation paying such dividends with respect to the profits out of which such dividends are paid. However, the deduction allowed the Norwegian corporation for dividends paid out by it shall be reduced by the net amount of dividends received from the United States corporation.

Article 24. SOURCE OF INCOME

This article sets forth in a single provision various rules which are to be applied to determine the source of the different kinds of income covered by the proposed Convention: dividends, interest, royalties, income from real property, including gains derived from the sale of such property, and compensation for personal services. These rules affect the application of Article 22 (General Rules of Taxation) and Article 23 (Relief from Double Taxation). A source of income article is contained in the present Convention.

The source of any kind of income not covered by the proposed Convention is to be determined under the internal law of the two States. In the case of different source rules applicable to an item of income the competent authorities of the two States under the mutual agreement procedure may establish a common source for the item of income.

Dividends will be treated as income from sources within a State only if paid by a corporation of the State.

Interest will be treated as income from sources within a State only if paid by that State, or by a political subdivision, local authority, or resident of that State. However, there are two situations relating to interest paid on indebtedness where this general rule does not apply. The general rule does not apply, regardless of the residence of the person paying the interest, if the person paying the interest has a permanent establishment in either Contracting State in connection with which the indebtedness on which the interest is paid was incurred and the interest is borne by that permanent establishment. The general rule also does not apply if the person paying the interest is a resident of a Contracting State and has a permanent establishment in a State other than a Contracting State in connection with which the indebtedness on which the interest is paid was incurred and the interest is borne by that permanent establishment. In those cases in which the aforementioned exceptions to the general rule apply, such interest will be deemed to be from sources within the State in which the permanent establishment is located. The general rule set forth above in the first sentence corresponds generally to the Internal Revenue Code provision dealing with interest (other than interest on deposit with persons carrying on the banking business). The exceptions to this general rule, set forth above, are not contained in the Internal Revenue Code but are substantially similar to the rules contained in the United States-Belgium Income Tax Convention signed July 9, 1970, page 619, this Bulletin.

Royalties described in paragraph (2) of Article 10 will be treated as income from sources within a Contracting State only if they arise within that Contracting State.

Income from real property including royalties from the operation of mines, quarries, or other natural resources and gains derived from the sale, exchange, or other disposition of such property or the right giving rise to such royalties, will be treated as income from sources within a State only if such property is located in that State.

Income from the rental of tangible personal property will be treated as income from sources only within the State in which such property is located.

Compensation received by an individual for his performance of labor or personal services in any capacity will be treated as income from sources within a State only if such services are performed in that State. Compensation for labor or personal services performed aboard ships or aircraft oper-

ated by a resident of a State in international traffic or in fishing on the high seas will be treated as income from sources within that State, provided that the labor or services are performed by a member of the regular complement of the ship or aircraft. Notwithstanding the preceding provisions of this paragraph, remuneration described in Article 17 (Governmental Functions) and Article 19 (Social Security Payments) is to be treated as income from sources within a State only if paid by, or out of the fund to which contributions are made by, that State or a political subdivision or local authority thereof.

Income from the purchase and sale of personal property (other than gains defined as royalties in paragraph (2)(b) of Article 10 (Royalties)) is to be treated as income from sources within a State only if such property is sold in that State. This rule conforms to the rule set forth in section 861(a)(6) of the Internal Revenue Code.

Notwithstanding the above rules, paragraph (9) of Article 24 (Source of Income) provides that industrial and commercial profits attributable to a permanent establishment which the recipient, being a resident of one State, has in the other State, including income dealt with in the articles pertaining to income derived from real property and natural resources and dividends, interest, royalties, or capital gains if from rights or property which are effectively connected with such permanent establishment, will be treated as income from sources within that other State. This source rule is consistent with the policy underlying the Foreign Investors Tax Act of 1966, P.L. 89-809, 1966-2 C.B. 656, and is also reflected in our recent Conventions with France, Finland and Trinidad and Tobago, and in the Protocols to the German, Netherlands, and United Kingdom Conventions. In general the factors which under the proposed Convention determine whether the property giving rise to investment-type income is effectively connected with a permanent establishment are the same as the factors which under section 864(c) of the Internal Revenue Code determine whether fixed or determinable annual or periodical income is effectively connected with the conduct of a trade or business in the United States.

Several of the source rules set out in this article differ to some degree from those existing in the Internal Revenue Code. Since Article 22 (General Rules of Taxation) provides that the proposed Convention will not increase a person's United States tax, a taxpayer is entitled to use the more beneficial of the Code rule or the proposed Convention rule in calculating his income for United States tax purposes, or in the case of a citizen or resident of the United States, his foreign tax credit. Thus, for example, if income is effectively connected with a permanent establishment of a Norwegian corporation in the United States under this Convention but is not effectively connected under section 864(c) of the Code. and a lesser tax is due under the Internal Revenue Code if the income is not effectively connected, the taxpayer is subject only to the lesser tax. The rule on interest in this article permits Norway, under the proper circumstances, to impose a tax on any interest paid by a permanent establishment in Norway of a United States resident. While the rule appears to be fully reciprocal, the United States will not, because of section 861(a)(1)(b) of the Code, impose on nonresident aliens and foreign corporations a tax on interest paid by a resident of the United States unless such resident derives 20 percent or more of its gross income from United States sources for the 3-year period ending with the close of the taxable year of such resident preceding the payment of such interest.

It should also be noted that the source rules do not serve to extend the benefits of this proposed Convention to persons other than residents of the two States. Generally, the rules are only applicable for taxing residents of either State and, therefore, are not applicable in determining source of income of residents of other States, although the income of such other residents is of a type referred to in this article.

ARTICLE 25. NONDISCRIMINATION

The proposed Convention bans discrimination by one State against the citizens of the other State or permanent establishments of residents or corporations of the other State. Thus, for example, a citizen of Norway who is a resident of the United States and who meets the requirements specified in section 911 of the Internal Revenue Code would, under this article of the proposed Convention, be eligible for the benefits of section 911 although he is not a citizen of the United States.

This article provides, however, that a State may accord special treatment to its own residents on the basis of civil status or family responsibility.

Under paragraph (3) of Article 1 (Taxes Covered), the ban on discrimination contained in this article extends to all taxes without regard to subject matter and whether imposed at the national, state, or local level.

This article also deals with the fact that Norwegian domestic law in effect provides for a lower rate of tax on distributed earnings of a Norwegian corporation than on retained earnings of a Norwegian corporation because Norwegian corporations may deduct dividends declared out of the taxable year's profits before computing their national income tax liability. Branches of foreign corporations, however, are taxed under Norwegian law at the full rate imposed on undistributed profits irrespective of actual distributions of those profits to shareholders. Therefore a Norwegian permanent establishment of a United States corporation, if taxed on its entire Norwegian income, would suffer discriminatory taxation vis-a-vis Norwegian corpora-

tions. To remedy this, the proposed Convention provides that the Norwegian tax on a Norwegian permanent establishment of a United States corporation will be computed as if the permanent establishment were a Norwegian corporation which distributed to its United States shareholders, owning at least 10 percent of its voting stock, the same percentage of its profits as the United States corporation maintaining the permanent establishment distributes to its shareholders from its total profits. Thus, if a United States corporation with a permanent establishment in Norway distributes 20 percent of its total income to its shareholders, the permanent establishment will be taxed in Norway as if it were a Norwegian corporation which had distributed 20 percent of its profits. Thus its tax on the 20 percent of profits deemed distributed will be at the lower rate plus the 10 percent withholding tax on dividends which would have been paid if the 20 percent had actually been distributed by a Norwegian corporation.

Article 26. DIPLOMATIC AND CONSULAR OFFICERS

This article preserves the existing or subsequent fiscal privileges of diplomatic and consular officials under the general rules of international law or under the provisions of special agreements.

Article 27. MUTUAL AGREEMENT PROCEDURE

This article modernizes the mutual agreement procedures found in the existing Convention by adopting provisions similar to those in our recent Conventions with France, Finland, and Trinidad and Tobago, and in the recent amendments to our Conventions with the Netherlands, the United Kingdom, and the Federal Republic of Germany. When a resident of one State considers that action of one or both States has resulted, or will possibly result, in taxation contrary to the provisions of the proposed Convention, such resident may present his case to the competent authority of the State of which he is a resident. This remedy is in addition to any remedy provided by the national laws of either State.

This article contemplates that the competent authorities of the two States will endeavor to settle by mutual agreement such cases of taxation not in accordance with the proposed Convention as well as any other difficulties or doubts arising as to the interpretation or application of the proposed Convention. Some particular areas on which the competent authorities may consult and reach agreement are the amount of industrial and commercial profits to be attributed to a permanent establishment, the allocation of income, deductions, credits, or allowances between a resident and a related person, the definition of terms and the determination of source of particular items.

In implementing the provisions of this article, the competent authorities will communicate with each other directly and meet together for an exchange of oral opinions when advisable.

In cases in which the competent authorities reach agreement with respect to a particular matter, taxes will be adjusted and refunds or credits allowed in accordance with such agreement. This provision permits the issuance of a refund or credit notwithstanding procedural barriers otherwise existing under a State's law, such as the statute of limitations.

This provision will apply only where agreement or partial agreement has been reached between the competent authorities and will apply in the case of any such agreement after the proposed Convention goes into effect even though the agreement may concern taxable years prior thereto.

Revenue Procedure 70-18, 1970-2 C.B. 493, sets forth the procedure followed by the United States in implementing its obligations under this type of article.

Article 28. EXCHANGE OF INFORMATION

This article provides for a system of administrative cooperation between the competent authorities of the two States and specifies conditions under which information may be exchanged to facilitate the administration of the proposed Convention and of the domestic laws of the Contracting States concerning taxes to which the proposed Convention relates. This language permits the competent authorities to exchange information in connection with tax compliance generally, not merely illegal acts or crimes.

Information exchanged is treated as secret and may not be disclosed to any persons other than those (including a court or administrative body) concerned with the assessment, collection, enforcement, or prosecution of taxes subject to the proposed Convention, but this does not prohibit disclosure as part of a public court proceeding. In no case does this article impose an obligation on a State to disclose trade secrets or similar information or to carry out administrative measures or supply particulars where such action would be at variance with the laws or administrative practice of either State, or contrary to public policy. In general, the standard for the exchange of information is the standard used by the States in the enforcement of their own laws by administrative and judicial authorities.

The proposed Convention also provides (as the existing Convention does not) that the competent authority of each State will advise the competent authority of the other State of any addition to or amendment of tax laws which concern the imposition of taxes which are the subject of the proposed Convention. It is further provided that the competent authority of each State will exchange the texts of all published material interpreting the proposed Convention under the laws of the respective States, whether in the form of regulations, rulings, or ju-

dicial decisions. The proposed Convention also provides (as the existing Convention does not) for the exchange of information on either a routine basis or on request with reference to particular cases.

The mutual exchange of information called for by these provisions is presently in effect in most of the Conventions to which the United States is a party.

ARTICLE 29. ASSISTANCE IN COLLECTION

This article provides for mutual assistance in the collection of taxes where required to avoid an abuse of the proposed Convention. The provision is intended merely to insure that the benefits of the proposed Convention will only be available with respect to persons entitled to such benefits; it does not in any way alter the rights under other provisions of the proposed Convention.

The article provides that each State will endeavor to collect for the other State such amounts as may be necessary to insure that any exemption or reduced rate of tax granted under the proposed Convention will not be availed of by persons not entitled to those benefits. The existing Convention contains a similar provision. The proposed Convention specifically provides that this article will not require a State, in order to collect taxes which are imposed by the other State, to undertake any administrative measures that differ from its internal regulations or practices nor will this article require a State to undertake any administrative or judicial measures which are contrary to that State's sovereignty, security, or public policy.

ARTICLE 30. EXTENSION TO TERRITORIES

This Article provides a method for extending the Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, to all or any areas for whose international relations the United States or Norway, as the case may be, is responsible and which area imposes taxes substantially similar in character to those which are the subject of the proposed Convention.

Extension to an area may be accomplished through a written notification given by the one State to the other State through diplomatic channels. The other State shall indicate its acceptance by a written communication through diplomatic channels. When the notification and communication have been ratified in accordance with the constitutional procedures of each State and instruments of ratification exchanged, the extension will take effect from the date of, and be subject to such conditions as are specified in, the notification. Without such acceptance and exchange of instruments and ratification in respect of an area, none of the provisions of the proposed Convention shall apply to such areas.

ARTICLE 31. ENTRY INTO FORCE

This article provides for the ratification of the proposed Convention and for the exchange of instruments of ratification as soon as possible. The proposed Convention will enter into force 2 months after the day of the exchange of such instruments. However, the provisions of the proposed Convention will be effective:

In the case of the United States:

(1) As respects the rate of withholding tax, to amounts paid on or after the date on which the proposed Convention enters into force; and

(2) As respects other income taxes, to taxable years beginning on or after January 1, 1971.

In the case of Norway:

(1) As respects the rate of withholding tax, to amounts paid on or after the date on which the proposed Convention enters into force; and

(2) As respects other taxes, to income years beginning on or after January 1, 1971.

The Convention of June 13, 1949, as well as the Supplementary Convention of July 10, 1958, will terminate and cease to have effect in respect of income to which the proposed Convention applies under the above-mentioned rules of this article.

ARTICLE 32. TERMINATION

The proposed Convention will continue in effect indefinitely, but may be terminated by either State at any time after 5 years from the date on which the Convention enters into force. A State seeking to terminate the proposed Convention must give at least 6 months prior notice through diplomatic channels.

If the proposed Convention is terminated, such termination will be effective as respects income of taxable years or income years beginning (or, in the case of taxes payable at the source, payments made) on or after January 1 next following the expiration of the 6-month period. Notwithstanding the foregoing provisions of this article, the provisions of Article 19 (Social Security Payments) may be terminated by either State at any time after the proposed Convention enters into force upon prior notice through diplomatic channels.

Subpart B.—Legislation

Public Law 92-552,
92nd Congress, S. 3822,[1]
October 25, 1972

An Act authorizing the City of Clinton Bridge Commission to convey its bridge structures and other assets to the State of Iowa and to provide for the completion of a partially constructed bridge across the Mississippi River at or near Clinton, Iowa, by the State Highway Commission of the State of Iowa.

* * * * *

SEC. 4. The interstate bridge or

[1] This publication of the law is restricted to excerpts involving internal revenue matters; Senate Report No. 92-1102 is not published herein.