information for its tax purposes. Also, if specifically requested, a country must supply information in authenticated form.

The present treaty contains a provision that provides that information exchanged is to be treated as secret except that it may be disclosed to any person concerned with or made a part of a public record with respect to the assessment or collection, or litigation concerning, the taxes to which the treaty applies. The Committee understands that there is a question as to whether, under the language in the treaty, the Congress, in the exercise of its oversight responsibilities, could obtain the information exchanged under the treaty. The Committee believes that such access is permitted, and is recommending that the protocol to the treaty be approved subject to an understanding that such access is permitted.

Article XIII. Entry into Force

The proposed protocol will enter into force on the date of exchange of instruments of ratification. Once in force, the provisions in Article I of the proposed protocol, dealing with the foreign tax credit, will apply retroactively to the 6 years preceding January 1 of the year in which the protocol enters into force. The other provisions apply only after the protocol has entered into force.

[20] IX. TEXT OF THE RESOLUTION OF RATIFICATION

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Protocol Amending the Tax Convention with the Kingdom of Norway (signed at Oslo on December 3, 1971), which Protocol was signed at Oslo on September 19, 1980. (Ex. Z, 96th Cong., 2nd Session), subject to the understanding that appropriate Congressional committees and the General Accounting Office shall be afforded access to the information exchanged under this treaty where such access is necessary to carry out their oversight responsibilities, subject only to the limitations and procedures of the Internal Revenue Code.

Technical Explanation[1] of the Protocol, signed on September 19, 1980,[2] Amending the Convention between the United States and Norway with Respect to the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property, Signed on December 3, 1971

INTRODUCTION

In this technical explanation of the Protocol signed on September 19, 1980 ("the Protocol"), references are made to 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 on December 3, 1971 [1973-1 C.B. 669] (the "1971 Convention"). The term "the Convention" means the 1971 Convention as amended by the Protocol. The references to the 1971 Convention are intended to put various provisions of the Protocol into context. The technical explanation does not, however, provide a complete comparison between the Protocol and the provisions of the 1971 Convention amended by the Protocol. Moreover, neither the Protocol nor the technical explanation is intended to have implications for the interpretation of the 1971 Convention.

The technical explanation is an official guide to the 1971 Convention as amended by the Protocol. It reflects policies behind particular provisions as well as understandings reached with respect to the interpretation and application of the Convention.

Article I

Article I of the Protocol amends two Articles of the 1971 Convention—Article 1 (Taxes Covered) and Article 23 (Relief from Double Taxation)—relevant to U.S. foreign tax credits for certain payments to Norway.

These amendments take account of certain changes made in Norwegian law in 1975. Pursuant to the Act of June 13, 1975, Norway adopted a new revenue raising measure (the "special tax") with respect to income from submarine petroleum resources in Norway. The special tax is imposed on income from, among other activities, exploration or exploitation of submarine oil or gas. The rate of the special tax, as provided in 1980 legislation which amended the Act of June 13, 1975, is 35 percent. The special tax is not deductible in computing liability for the Norwegian national and municipal taxes on income. Losses or deficits with respect to offshore activities and up to 50 percent of losses or deficits attributable to activities other than offshore petroleum activities are taken into account in determining liability for the national and municipal taxes on income.

The special tax allows for the deduction of expenses attributable to oil and gas operations and provides a special "uplift" deduction. No losses or deficits arising in a year from other activities are deductible in computing liability for the special tax. The gross income and value of stocks of petroleum subject to the special tax are generally assessed according to a norm price stipulated retroactively by the King of Norway. The norm price for a period applies to transactions between related and unrelated persons and is based on the price at which

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[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 Protocol amending the 1971 Income Tax Convention with Norway was signed on September 19, 1980, and submitted by the President to the Senate on December 2, 1980. On September 24, 1981, the Senate Committee on Foreign Relations held hearings and this Technical Explanation was presented. The Senate voted its advice and consent on November 18, 1981, and instruments of ratification were exchanged on December 15, 1981.

[2] Page 440; Senate Report 97-32, page 444; Senate Executive Z is not published.

petroleum could have been sold between independent parties in a fair market. In this regard, realized and quoted prices for contemporaneous sales of petroleum of the same or corresponding types are taken into account along with necessary adjustments for quality variations and other relevant factors. Before a norm price is stipulated, Norway notifies affected parties and gives them an opportunity to issue statements and, if necessary, pursue administrative and judicial appeals on the issue of whether the norm price, as it applies to all persons, has been properly determined.

The special tax was enacted after the 1971 Convention was signed, did not replace any comparable Norwegian measure in effect in 1971 and contains several features different from the 1971 Norwegian taxes specifically covered by the 1971 Convention. The Protocol amends the 1971 Convention to assure treaty coverage of the special tax. The Protocol also removes any doubt about coverage of the Norwegian national and municipal taxes on income, as affected by enactment of the special tax.

Thus, paragraph (1) of Article I of the Protocol amends paragraph (2) of Article 1 of the 1971 Convention to specify that the Norwegian taxes which are the subject of the Convention include the following taxes, as in effect on September 19, 1980, and any taxes substantially similar to such taxes enacted after that date: the national and municipal taxes on income (including contributions to the tax equalization fund); the special tax administered under section 5 of the Act of June 13, 1975, No. 35, relating to the taxation of submarine petroleum resources. The taxes imposed by Norway and specified in subparagraph (b) of paragraph (1) of Article 1 of the 1971 Convention, and any taxes substantially similar to those taxes imposed in addition to, or in place of those taxes after December 31, 1971, are also the subject of the Convention.

New subparagraph (b) of paragraph (2) of Article 1 assures that the term "Norwegian tax", which is used in paragraph (1) of Article 6 (Shipping and Air Transport) and, with modifications, in new paragraph (1) of Article 23, includes both the taxes described in new paragraph (2) of Article 1 and those described in existing subparagraph (b) of paragraph (1) of Article 1.

Paragraph (2) of Article I of the Protocol amends paragraph (1) of Article 23 of the 1971 Convention. New paragraph (1) of Article 23 provides that the United States shall allow to a resident or a citizen of the United States as a credit against U.S. tax on income the appropriate amount of income taxes imposed by Norway. In addition, in the case of a U.S. company owning at least 10 percent of the voting stock of a company which is a resident of Norway and from which the U.S. company receives dividends in any taxable year, the United States agrees by way of new paragraph (1) to allow as a credit against the United States tax on income the appropriate amount of income taxes imposed by Norway on the company which is a resident of Norway and with respect to the profits out of which the dividends are paid.

For purposes of applying the United States foreign tax credit in relation to taxes paid or accrued to Norway, new paragraph (1) of Article 23 provides that the Norwegian taxes referred to in subparagraph (b) of paragraph (1) and new paragraph (2) of Article 1 are considered to be income taxes and are allowed as credits against U.S. tax on income, subject to the rules of paragraph (1) of Article 23. New paragraph (1) of Article 23 does not cover as income taxes the Norwegian national and municipal taxes on capital, the municipal tax on real property, or any taxes substantially similar to such taxes on capital and real property imposed after December 3, 1971.

New subparagraph (b) of paragraph (1) of Article 23 provides that the appropriate amount allowed as a credit pursuant to new subparagraph (a) of paragraph (1) of Article 23 is based upon the amount of income taxes paid or accrued to Norway. Whether an amount is paid or accrued is determined under the Internal Revenue Code of 1954 ("the Code"). Subparagraph (b) provides further that direct and deemed paid credits allowed under the Convention by the United States pursuant to paragraph (1) shall not exceed the limitations provided by the Code for the taxable year. Thus, as is generally the case under U.S. income tax conventions, provisions such as Code sections 901(c), 904, 905, 907, 908 and 911 apply for purposes of computing the allowable credit under paragraph (1).

New subparagraph (b) also provides Convention limitations on the U.S. foreign tax credit allowed under the Convention in the case of persons subject to the Norwegian special tax or to a substantially similar revenue measure imposed by Norway. The credit allowed under the Convention with respect to such persons is limited by subparagraph (b) to the amount of income taxes paid or accrued to Norway attributable to Norweigan source income, as determined under the Convention. Subparagraphs (b)(i) and (iii) impose three limitations on the credit allowed with respect to such persons under the Convention:

(1) with respect to income taxes paid or accrued to Norway on oil and gas extraction income from oil or gas wells in Norway, the amount allowed as a credit for a taxable year shall not exceed the maximum U.S. statutory corporate tax rate for the taxable year times the amount of oil and gas extraction income from oil or gas wells in Norway;

(2) with respect to income taxes paid or accrued to Norway on Norwegian source oil related income, other than oil and gas extraction income from oil or gas wells in Norway, the amount allowed as a credit for a taxable year shall not exceed the maximum U.S. statutory corporate tax rate for the taxable year times the amount of such Norwegian source oil related income;

(3) with respect to income taxes paid or accrued to Norway on other Norwegian source income (other than Norwegian oil and gas extraction income from oil or gas wells in Norway

and other Norwegian source oil related income), the amount allowed as credit for a taxable year shall not exceed the maximum U.S. statutory corporate rate for the taxable year times the amount of such other Norwegian source income.

The amount of Norwegian taxes attributable to oil and gas extraction income from oil or gas wells in Norway is determined under the principles of section 907(c)(5) of the Code. Such U.S. principles are then used to determine the amount of Norwegian taxes attributable to other Norwegian source oil related income and other Norwegian source income. This attribution is necessary because neither the national tax, the municipal tax nor the special tax is imposed exclusively on what is, under U.S. rules, extraction income, other oil related income, or other income. And, the special tax is imposed on only part of the income subject to the national and municipal taxes.

New subparagraph (b) provides for a carryover of foreign tax credits with respect to income taxes paid or accrued to Norway on oil and gas extraction income from oil or gas wells in Norway. The carryover credits are limited by subparagraph (b)(ii) to the lesser of the amount of taxes paid or accrued to Norway on oil and gas extraction income from oil or gas wells in Norway that is not allowed as a credit under subparagraph (b)(i), or two percent of such taxable income for the taxable year. These credits may be carried to the two preceding or five succeeding taxable years, to the extent such credits are not deemed paid or accrued in a prior taxable year. The carryover credits are allowable in the year in which deemed paid or accrued subject to the extraction tax limitation of subparagraph (b)(i) and any relevant limitations provided by the Code, such as sections 904(a) and 907.

Similarly, subparagraph (b)(iii) provides for carryovers under the Convention for the amount of income taxes paid or accrued to Norway on Norwegian source oil related income (other than income described in subparagraph (b)(i)) and on other Norwegian source income. These carryover credits are allowable in the year in which deemed paid or accrued subject to the respective Convention limitations in subparagraphs (b) (ii) and (iii) of paragraph (1) and relevant Code limitations such as those of sections 904(a) and 907(b).

If the provisions of the Convention are relied upon to claim a foreign tax credit for Norwegian income taxes paid by a person subject to the special tax, and any such payments would not otherwise be creditable under the Code then: the limitations of the third sentence of new subparagraph (b) apply, whether or not the special tax is paid in the taxable year; all such Norwegian income taxes must be treated as provided in the Convention.

If the taxes paid or accrued to Norway by a person subject to the special tax are creditable under the Code, and such taxes exceed the proportion of U.S. tax that taxable income attributable to Norwegian sources (as determined under the Convention) bears to entire income, such taxes are creditable under the Code against U.S. tax with respect to income from other foreign sources on the same basis as other creditable taxes and subject to the limitations of the Code. Moreover, if a person subject to the special tax chooses in a year not to rely upon the provisions of the Convention relevant to a claim for a foreign tax credit for any amounts paid to Norway, then the Convention limitations contained in the thrid sentence of subparagraph (b) of new paragraph (1) would not apply in that year and, pursuant to the current overall foreign tax credit limitation of the Code, Norwegian taxes creditable under the Code and creditable taxes paid to any other country can offset U.S. tax on income from Norwegian and other foreign sources.

As stated above, Norway's domestic law uses the norm price in calculating petroleum income for purposes of Norwegian tax liability. The Government of Norway takes the position that under Norwegian law producers may appeal this price only on the issue of its accuracy for the producers as a group. It is the position of the United States that the provisions of the Protocol are not intended to have any implications for whether the provisions of the Convention (or the 1971 Convention) provide a basis for an appeal of the norm price as it applies to an individual producer.

Pursuant to paragraph (2)(a) of Article XIII of the Protocol, the amendments to Articles 1 and 23 made by Article I of the Protocol have effect beginning with the sixth taxable year preceding January 1 of the year in which the Protocol enters into force. Thus, if the United States and Norway exchange instruments of ratification of the Protocol on or before December 31, 1981, a calendar year U.S. taxpayer may claim the benefits of the amendments to Articles 1 and 23 beginning with his taxable year beginning on January 1, 1975.

Article II

Article II of the Protocol amends the 1971 Convention to provide special rules with respect to the taxation of business profits and wages attributable to certain offshore activities.

Article II adds a new Article 4A (Offshore Activities) to the Convention. Paragraph (1) of new Article 4A overrides the provisions of Article 4 (Permanent Establishment) and Article 13 (Independent Personal Services) to provide that a resident of a Contracting State carrying on activities in the other Contracting State in connection with the exploration or exploitation of the seabed and subsoil and the natural resources is deemed to be carrying on, in respect of those activities, a business in that State through a permanent establishment. This paragraph is not intended to apply to activities, such as leasing, which are passive.

Paragraph (2) of new Article 4A provides that the right to tax at source provided in paragraph (1) does not apply where the activities are carried on for 30 days or less, in the aggregate, in any period of 12 months. If, however, two or more related persons carry on substantially similar ac-

tivities in a Contracting State, their activities are aggregated for purposes of determining whether the 30 day threshold has been crossed.

Paragraph (3) assures that the source basis exemption provided in Article 6 (Shipping and Air Transport) applies to profits from the operation in international traffic of ships or aircraft where the transportation is to a location where activities are being carried on in connection with the exploration or exploitation of the seabed and subsoil and their natural resources. The reference to transportation by a ship or aircraft in international traffic encompasses the use of tugboats and other similar vessels in international traffic in connection with exploration or exploitation activities.

Paragraph (4) of new Article 4A provides special rules with respect to the taxation of wages, salaries and other similar remuneration derived from labor or personal services performed in connection with the exploration or exploitation of the seabed. Paragraph (4) provides that such remuneration is not taxable by a Contracting State to the extent attributable to labor or personal services performed in that State for a period of 60 days in the taxable year by an individual resident in the other Contracting State even if the person has performed services in that State for more than 60 days in that year and is taxable by that State by reason of Article 14 (Dependent Personal Services).

In addition, if the labor or personal services are performed in Norway, the remuneration is not taxable by Norway if the services are performed on behalf of an employer who is a resident of the United States, the services are performed with respect to a petroleum reservoir which extends between Norway and any other State with which Norway has an agreement for joint exploitation of the reservoir and the exploitation is performed simultaneously in Norway and that other State. This limitation on Norway's right to tax on a source basis comes into force only by way of a separate agreement between the competent authorities of the United States and Norway. This agreement could be entered into force under the authority of Article 27 (Mutual Agreement Procedure).

Paragraph (5) of new Article 4A assures that a resident of a Contracting State performing services aboard a ship or aircraft covered by paragraph (3) of Article 4A receives the same tax treatment in the other Contracting State as do other employees performing services aboard ships and aircraft in international traffic. (See, in this regard, Article 14 (Dependent Personal Services).) Thus, wages, salaries and similar remuneration of a resident of a Contracting State performing such services are taxable in the other Contracting State if:

(1) the individual is a member of the regular complement of a ship or aircraft covered by paragraph (3) of Article 4A and such ship or aircraft is operated by a resident of such other State; or

(2) the individual's wages are not exempt from tax in that other State pursuant to paragraph (2) of Article 14.

Article III

Article III of the Protocol amends the rules of the 1971 Convention with respect to taxation by Norway of income from the operation in international traffic of ships or aircraft.

Article III replaces paragraph (1) of Article 6 (Shipping and Air Transport) with a new paragraph (1) which provides that income which a resident of the United States derives from the operation in international traffic of ships or aircraft is exempt from Norwegian tax. Thus, new paragraph (1) drops the requirement of the 1971 Convention that exemption from Norwegian tax depends, in part, upon where the ship or aircraft is registered. By deleting this requirement, the rules of paragraph (1) become generally parallel to these of paragraph (2).

Article IV

Article IV of the Protocol amends the provisions of the 1971 Convention to change both the maximum rate of tax that may be imposed by a Contracting State on certain dividends paid to a resident of the other Contracting State and the circumstances in which one State may impose tax on dividends paid to a resident of the other Contracting State.

Article IV of the Protocol replaces paragraph (2) of Article 8 (Dividends) with a new paragraph which provides that dividends derived from within one Contracting State by a resident of the other Contracting State may not be taxed by the first-mentioned State at a rate of tax exceeding 15 percent of the gross amount actually distributed. Thus, new paragraph (2) deletes the provision of the 1971 Convention which limited the rate of tax imposed on certain dividends to 10 percent.

This amendment reflects certain reductions in Norway's corporate tax burden and Norway's desire to achieve a consistent rate of tax of 15 percent on dividends paid by Norwegian corporations. Norway has also renegotiated its income tax conventions with other countries to obtain this result. It was agreed that if the Government of Norway were to substantially increase its corporate tax burden by altering the rates of its split-rate corporate tax, or by taking other measures such as increasing the Norwegian corporate reserve requirement, Norway would consent to a renegotiation of the rates of withholding on dividends.

Article IV also amends paragraph (4) of Article 8. New paragraph (4) provides that dividends paid by a corporation of one of the Contracting States are exempt from tax by the other Contracting State except if the recipient of the dividends is a resident of the second-mentioned State; or, the recipient of the dividends has a permanent establishment in the second-mentioned State and the dividends are attributable to such permanent establishment.

In addition, where a corporation of Norway pays dividends out of profits attributable to one or more permanent establishments which the cor-

poration had in the United States, the United States may tax such dividends provided that the profits are attributable to such permanent establishment(s) and constitute at least 50 percent of the corporation's gross income from all sources for the taxable year. If such a dividend is derived by a resident of Norway, other than a citizen of the United States, and the dividend is not attributable to a United States permanent establishment of the resident, the U.S. tax on the dividend is limited to 15 percent of the gross amount actually distributed, as provided in new paragraph (2) of Article 8. If such a dividend is derived by a resident of a State other than Norway, then the U.S. tax on the dividend is not limited by the provisions of the Convention. Also, new subparagraph (b) of paragraph (4) provides that a dividend paid by a Norwegian corporation to a citizen of the United States is taxable by the United States whether or not the citizen is a resident of Norway. Subparagraph (b) of paragraph (4) reflects the general rule that the United States may tax its citizens as if the Convention had not come into effect. See paragraph (3) of Article 22 (General Rules of Taxation).

Article V

Article V of the Protocol replaces Article 9 (Interest) of the 1971 Convention to provide new rules with respect to the taxation of interest derived within one Contracting State by a resident of the other Contracting State.

New Article 9 provides that interest derived from sources within one Contracting State by a resident of the other Contracting State is exempt from tax by the first-mentioned State in any calendar year in which the domestic law of either Contracting State exempts such interest from tax. Thus, so long as Norway continues to exempt from Norwegian tax interest derived from within Norway (not attributable to a permanent establishment in Norway) by persons not resident in Norway, the provisions of paragraph (1) of new Article 9 would exempt a resident of Norway from U.S. tax on interest income derived from sources within the United States (not attributable to a permanent establishment in the United States). Also, if the Code were changed, for example, to exempt from U.S. tax U.S. source interest (not effectively connected with the conduct of a trade or business within the United States) paid to a person not resident in the United States, paragraph (1) would exempt from any future Norwegian tax interest (not attributable to a Norwegian permanent establishment) derived from Norway by a resident of the United States.

In the event that for a calendar year neither the domestic law of Norway nor the Code exempts, for example, interest paid to nonresidents, then pursuant to paragraph (1) of new Article 9 such interest derived from sources within one of the Contracting States by a resident of the other Contracting State may be taxed by both Contracting States. Pursuant to paragraph (2) of new Article 9, however, the rate of tax imposed by a Contracting State on interest derived from sources within that State by a resident of the other Contracting State is limited to 10 percent of the gross amount of the interest. Moreover, there are five circumstances where, notwithstanding the general right to tax at 10 percent, interest derived from sources within a Contracting State by a resident of the other Contracting State is exempt from tax in the first-mentioned State:

(1) the interest is beneficially owned by, or is paid by, a Contracting State, a political subdivision or local authority thereof or an instrumentality, subdivision or authority of a Contracting State which is not subject to tax by that State;

(2) the interest is beneficially owned by a resident of Norway or the United States, as the case may be, with respect to debt obligations guaranteed or insured by that State, a political subdivision or local authority of such State or an instrumentality, subdivision or authority of such State which is not subject to tax by that State;

(3) the interest is paid by a purchaser to a seller, who is a resident of the other Contracting State, in connection with a commercial credit resulting from deferred payments for goods, merchandise or services;

(4) the interest is paid with respect to a loan of any nature made by a bank;

(5) the interest is paid with respect to an obligation outstanding on September 19, 1980.

Paragraph (4) defines the term "interest" for purposes of the Convention. The term "interest" as used in the Convention means income from bonds, debentures, government securities, notes or other evidences of indebtness, whether or not secured, and debt-claims of every kind, as well as other income which, under the taxation law of the Contracting State in which the income has its source, is assimilated to income from money lent. The deletion from the definition of interest of the phrase "whether or not secured and whether or not carrying a right to participate in profits . . .", which appears in the definition of "interest" in Article 9 of the 1971 Convention, is not intended to change the substance of the definition of interest in the 1971 Convention.

Paragraph (5) of new Article 9 clarifies the relationship between provisions of Article 9 and those of Article 5 (Business Profits). Paragraph (5) provides that if a resident of one of the Contracting States is the beneficial owner of interest derived from sources within the other Contracting State and he has a permanent establishment in that other State to which the interest is attributable, then such income is taxable in that other State as "industrial or commercial profits" pursuant to paragraph (3)(a) of Article 5.

New paragraph (6) parallels paragraph (4) of Article 9 of the 1971 Convention. Pursuant to paragraph (6) the provisions of new Article 9 do not apply to any interest paid between related persons that exceeds amounts whichwould have been paid to an unrelated person. Any such excess payment may be taxed by Norway and

the United States, each according to its own law, including the provisions of the Convention where applicable.

Paragraph (7) sets forth the general rule that a Contracting State may not impose tax on interest paid by a resident of the other Contracting State to a person not resident in the first-mentioned State. Paragraph (7) provides further, however, that the first-mentioned State retains the right to tax interest where:

(1) the interest is treated as income from sources within the first-mentioned State pursuant to paragraph (2) of Article 24 (Source of Income);

(2) the interest is attributable to a permanent establishment in the first-mentioned State which belongs to the recipient of the interest;

(3) the first-mentioned State is the United States and the interest is paid by a Norwegian corporation to a citizen of the United States resident in any State.

The provisions of paragraph (7) of new Article 9 parallel the provisions of paragraph (5) of Article 9 of the 1971 Convention.

Pursuant to subparagraph (b) of paragraph (2) of Article XIII of the Protocol, the 10 percent tax that could be imposed by the State of source pursuant to new Article 9 could only be imposed on amounts paid on or after the first day of the sixth month next following the date on which the exchange of instruments of ratification of the Protocol takes place. As explained above, however, such tax could not be imposed in any calendar year in which, for example, either Norway or the United States exempts from tax under its domestic law interest paid to nonresidents.

Article VI

Article VI of the Protocol revises the rules of the 1971 Convention concerning the taxation of capital gains. Paragraph (1) of Article VI was negotiated in anticipation of amendments to the Code authorizing more effective source basis taxation of gains attributable to real property in the United States.

Paragraph (1) of Article VI adds two provisions to paragraph (1) of Article 12 (Capital Gains) to broaden the existing exceptions to the general rule of paragraph (1) of Article 12. That general rule is that a resident of one of the Contracting States is exempt from tax by the other Contracting State on gains from the sale or exchange or other disposition of capital assets. The first provision, new subparagraph (b) of paragraph (1) of Article 12, authorizes the other Contracting State to tax income from the sale or exchange or other disposition of capital assets if the income is derived from the sale or exchange or other disposition of stock of a corporation the property of which consists principally of real property situated within the other Contracting State, or an interest in a partnership, trust or estate the property of which consists principally of real property situated within the other Contracting State. For the purposes of this provision the term "real property" includes stock of a corporation the property of which consists principally of real property situated within the other Contracting State or an interest in a partnership, trust or estate the property of which consists principally of real property situated within the other Contracting State.

It should be noted that the provisions of Article 26 (Nondiscrimination) are not intended to override the right of the United States to impose the tax provided in Code section 897 under new subparagraph (b) of paragraph (1) of Article 12.

The second provision, new subparagraph (c) of paragraph (1) of Article 12, authorizes the other Contracting State to tax income from the sale, exchange or other disposition of stock of a corporation which is a resident of that State. Such income may be taxed by that State, however, only if two requirements are met:

(1) the recipient of the gain owns within the 12 months preceding such sale, exchange or other disposition more than 25 percent of the stock of that corporation; and

(2) more than 50 percent of the fair market value of the gross assets of that corporation used in its trade or business are physically located in that State on the last day of each of the three taxable years preceding the sale, exchange or other disposition (or if the corporation has been in existence for less than 3 years, on the last day of each preceding taxable year of the corporation).

Paragraph (2) of Article VI makes conforming amendments to Article 12 to reflect changes made by Article VI of the Protocol to paragraph (1) of Article 12. Thus, paragraph (3) of Article 12 of the 1971 Convention is deleted and the cross references in existing paragraph (4) of Article 12 are modified and incorporated in new paragraph (3).

Paragraph (3) of Article VI conforms and expands a cross reference to Article 12 in Article 24 (Source of Income). New paragraph (8) of Article 24 provides that income from gains described in paragraph (1) of Article 12 derived by a resident of a Contracting State and which may be taxed by the other Contracting State is treated as income from sources within that other Contracting State for the purposes of the Convention. This source rule, like the other source rules of Article 24, is relevant for purposes of applying the United States credit in relation to taxes paid to Norway under the Convention. See paragraph (1) of Article 23 (Relief from Double Taxation).

Article VII

Article VII makes two changes to the 1971 Convention with respect to the taxation of services income of artistes and athletes.

Paragraph (1) of Article VII amends subparagraph (c) of paragraph (2) of Article 13 (Independent Personal Services) of the 1971 Convention. New subparagraph (c) provides that when an artiste or athlete performs services in an independent capacity in a Contracting State and such person is a resident of the other Contracting State, the first-mentioned State may tax the income derived from such services if the artiste or athlete is present in the first mentioned State more than a to-

tal of 90 days during the taxable year or such income exceeds, in the aggregate, $10,000 (or its equivalent in Norwegian Kroner) during the taxable year. In comparison subparagraph (c) of Article 13 of the 1971 Convention allows source basis taxation if the income from such services exceeds in the aggregate $3,000 U.S. dollars (or its equivalent in Norwegian Kroner) during the taxable year. As provided in the 1971 Convention, income from such services is also taxable by the State in which the services are performed if the individual is present in that State for a period or periods aggregating 183 days or more in the taxable year or the individual maintains a fixed base in that State for a period or periods aggregating 183 days or more in a taxable year. See subparagraphs (a) and (b) of paragraph (2) of Article 13.

Paragraph (2) of Article VII adds a new Article 14A (Artistes and Athletes) which concerns taxation of income in respect of activities exercised by an entertainer or an athlete in his capacity as such which accrues to a person other than the entertainer or athlete. New Article 14A provides that in these circumstances such income is taxable in the Contracting State in which the activities of the entertainer or athlete are exercised, notwithstanding the provisions of Article 5 (Business Profits), Article 13 (Independent Personal Services) or Article 14 (Dependent Personal Services). New Article 14A provides that income of an entertainer or athlete is deemed not to accrue to another person if it is established by the entertainer or athlete that neither the entertainer or athlete nor any persons related thereto participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

Article VIII

Article VIII amends the provisions of the 1971 Convention concerning the taxation of social security payments.

Article VIII changes existing Article 19 to provide that a citizen of the United States receiving social security payments and other public pensions paid by Norway is taxable only by Norway whether the citizen resides in the United States or in any other State. New Article 19 retains the rule of the 1971 Convention that social security payments and other public pensions paid by one of the Contracting States to an individual who is a resident of the other Contracting State are taxable only in the first-mentioned State. Article 19 does not apply to payments described in Article 17 (Governmental Functions).

Article IX

Article IX of the Protocol amends paragraph (3) of Article 22 (General Rules of Taxation) to assure that the United States may tax as a citizen a former citizen whose loss of citizenship has as one of its principal purposes the avoidance of income tax. The authority to impose U.S. tax with respect to such former citizens is limited by new paragraph (3) to a period of 10 years following the loss of citizenship.

Article X

Article X of the Protocol amends provisions of the 1971 Convention concerning relief from double taxation granted in Norway with respect to income derived from U.S. sources.

Paragraph (2) of Article X amends subparagraph (c) of paragraph (2) of Article 23 (Relief from Double Taxation) which obligates Norway to allow a foreign tax credit in a case where a Norwegian corporation receives dividends from a U.S. corporation in which it owns 10 percent or more of the stock. Under new subparagraph (c) Norway will continue to be obligated to give a credit against the tax otherwise payable by the Norwegian corporation for U.S. tax imposed on the U.S. corporation. The credit in Norway shall, however, be for that part of the United States tax imposed on the profits of the United States corporation out of which the dividends were paid in the proportion that the dividends received bear to the accumulated profits of the United States corporation in excess of such United States tax. Subparagraph (c) requires, moreover, that the Norwegian corporation claiming a credit against its Norwegian tax with respect to such United States tax must recognize as income in the year in which the dividend is received an amount equal to such credit. New subparagraph (c) also provides that the Norwegian credit shall not exceed the part of the Norwegian tax, as computed before the credit is given, which is appropriate to the income derived from sources in the United States under rules set forth in Article 24 (Source of Income).

Paragraph (3) of Article X of the Protocol adds a new subparagraph (d) to paragraph (2) of Article 23. New subparagraph (d) provides that in the case of a resident of Norway who derives income from offshore activities which may be taxed in the United States, Norway may also tax such income. Norway shall allow, however, as a credit against the tax in Norway on such income an amount equal to the tax paid in the United States. This credit allowed in Norway shall not, however, exceed that part of the Norwegian tax, as computed before the credit is given, which is attributable to the income which may be taxed in the United States.

Paragraph (1) of Article X of the Protocol amends subparagraph (a) of paragraph (2) of Article 23 to assure that the provisions of new subparagraphs (c) and (d), as well as the provisions of existing subparagraph (b), override the general rule of subparagraph (a) of paragraph (2). Under the general rule, Norway is committed to an exemption (with progression) with respect to certain income that may be taxed by or is exempt in the United States.

Article XI

Article XI makes two changes to Article 27 (Mutual Agreement Procedure). First, Article XI amends paragraph (4) of Article 27 to clarify that any agreement reached under Article 27 may be implemented not-

withstanding any time limits in the domestic law of a Contracting State. Thus, with this amendment to Article 27, it will be clear that the United States competent authority can grant refunds of U.S. tax under Article 27 even if under the Code such refund would otherwise be barred by the U.S. statute of limitations.

Second, Article XI adds to Article 27 a rule found in several recent United States income tax conventions. This rule, which is in new paragraph (5) of Article 27, authorizes the competent authorities to agree to adjust upward, in light of economy developments, any amounts specified in the Convention in terms of currency.

Article XII

Article XII of the Protocol amends paragraph (3) of Article 28 (Exchange of Information) to clarify the means to be taken by a Contracting State in responding to a request from the other Contracting State for such information as is pertinent to carrying out the provisions of the Convention and of the domestic laws of the Contracting State concerning the taxes covered by the Convention. New paragraph (3) provides that if information is requested by a Contracting State in accordance with Article 28, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the requesting State were the tax of the requested State and were being imposed by the requested State. In addition, the competent authority of the requested State shall, if so requested, provide information under Article 28 in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings) to the same extent such depositions and documents can be obtained under the laws and administrative practices of the requested State with respect to its own taxes.

Article XIII

Article XIII of the Protocol provides rules with respect to ratification, entry into force, and effective dates of the Protocol. The Protocol enters in force upon the exchange instruments of ratification. The provisions of the Protocol have effect at three different times:

(1) in respect of credits against U.S. tax allowed pursuant to Article I of the Protocol, as of the sixth taxable year preceding January 1 of the year in which the instruments of ratification of the Protocol are exchanged;

(2) in respect of tax withheld at the source, to amounts paid on or after the first day of the sixth month next following the date on which the instruments of ratification of the Protocol are exchanged;

(3) in respect of other taxes, for taxable years beginning on or after January 1 of the year following the year in which the instruments of ratification of the Protocol are exchanged.

Subpart B.—Legislation and Related Committee Reports

Public Law 97-216[1]
97th Congress, H.R. 6685
July 18, 1982

An Act making urgent supplemental appropriations for the fiscal year ending September 30, 1982, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, to supply supplemental appropriations (this Act may be cited as the "Urgent Supplemental Appropriations Act, 1982") for the fiscal year ending September 30, 1982, and for other purposes, namely:

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TITLE II
GENERAL PROVISIONS

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[1] This publication of the law is restricted to excerpts involving tax matters. Conference Report No. 97-632 is not published.

SEC. 211. (a) Subsection (a) of section 112 of the Act of December 15, 1981 (95 Stat. 1194), is amended by inserting after "in connection with a qualified issue" the following: ", except to the extent such funds are used in connection with the consideration or granting of an exemption from the application of such revenue ruling or regulation under proposed income tax regulation section 1.103-7(b)(6)(ii) or any similar statute or regulation".

(b) Subsection (d) of section 112 of the Act of December 15, 1981 (95 Stat. 1196), is amended to read as follows:

"(d) It is the sense of the Congress that after August 23, 1981, the Secretary of the Treasury or his delegate, in all cases, should enforce any revenue ruling or regulation described in paragraph (1) or (2) of subsection (a) in a manner consistent with the provisions of this section. Nothing in the preceding sentence shall prevent the Secretary of the Treasury or his delegate from granting or considering an exemption from the application of such a revenue ruling or regulation under proposed income tax regulation section 1.103-7(b)(6)(ii) or any similar statute or regulation.".

* * * * *

SEC. 215. (a) The last sentence of section 162(a) of the Internal Revenue Code of 1954 (relating to trade or business expenses) is amended by inserting ", but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of $3,000" after "home".

(b) Paragraph (4) of section 280A(f) of such Code (relating to coordination with section 162(a)(2)) is amended to read as follows:

"(4) COORDINATION WITH SECTION 162(a)(2).—Nothing in this section shall be construed to disallow any deduction allowable under section 162(a)(2) (or any deduction which meets the tests of section 162(a)(2) but is allowable under another provision of this title) by reason of the taxpayer's being away from home in the pursuit of a trade or business (other than the trade or business of renting dwelling units).".