

TREATY USA - BARBADOS

*CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND BARBADOS
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, TOGETHER WITH AN
EXCHANGE OF NOTES, SIGNED AT BRIDGETOWN ON DECEMBER 31, 1984*

GENERAL EFFECTIVE DATE UNDER ARTICLE 28: 1 JANUARY 1984

ARTICLE 22

Limitation on Benefits

- 1) A person which is a resident of a Contracting State and which derives income from sources within the other Contracting State shall not be entitled, in that other Contracting State, to the benefits of Article 6 (Income from Real Property (Immovable Property)) through Article 23 (Relief from Double Taxation) if:
 - a) 50 percent or less of the beneficial interest in such person (or in the case of a company, 50 percent or less of the number of shares of each class of the company's shares) is owned, directly or indirectly, by any combination of one or more individual residents of a Contracting State or citizens of the United States; or
 - b) the income of such person is used in substantial part, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons who are residents of a State other than a Contracting State, or who are not citizens of the United States.
- 2) The provisions of paragraph 1 shall not apply if the income derived from the other Contracting State is derived in connection with, or is incidental to, the active conduct by such person of a trade or business in the first-mentioned Contracting State (other than the business of making or managing investments). The preceding sentence shall not apply with respect to a person engaged in the business of banking or insurance in a Contracting State, if the income of such person is subject to tax in the Contracting State in which it is resident at a rate of tax which is substantially below the rate of tax generally applicable to business income in that State. Notwithstanding the preceding sentence, the income of such a bank which is not derived from the conduct of a banking business (including but not limited to income attributable to the taking of deposits and making of loans, managing of investments and performance of trust or other services as fiduciary), shall be subject to the provisions of the first sentence of this paragraph.
- 3) The provisions of paragraph 1 shall not apply if the person deriving the income is a company which is a resident of a Contracting State in whose principal class of shares

there is a substantial and regular trading on a recognized stock exchange. For purposes of the preceding sentence, the term "recognized stock exchange" means:

- a) The NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934; and
 - b) any other stock exchange agreed upon by the competent authorities of the Contracting States.
- 4) If one of the Contracting States proposes to deny benefits to a resident of the other Contracting State by reason of this Article, the competent authorities of the Contracting States shall, upon request of the competent authority of the other Contracting State, consult each other.

PROTOCOL

ARTICLE VII

Article 22 (Limitation on Benefits) of the Convention shall be deleted and replaced by the following:

“ARTICLE 22 Limitation on Benefits

- 1) A person that is a resident of a Contracting State and derives income from the other Contracting State shall be entitled, in that other Contracting State, to all the benefits of this Convention only if such person is:
 - a) an individual;
 - b) a Contracting State or a political subdivision or local authority thereof;
 - c) engaged in the active conduct of a trade or business in the first-mentioned Contracting State (other than the business of making or managing investments, unless these activities are banking or insurance activities carried on by a bank or insurance company), and the income derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business;
 - d) a company in whose principal class of shares there is substantial and regular trading on a recognized stock exchange;

- e) (i) a person, more than 50 percent of the beneficial interest in which (or in the case of a company, more than 50 percent of the number of shares of each class of whose shares) is owned, directly or indirectly, by persons entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (f) or who are citizens of the United States; and
- (ii) a person, more than 50 percent of the gross income of which is not used, directly or indirectly, to meet liabilities (including liabilities for interest or royalties) to persons not entitled to the benefits of this Convention under subparagraphs (a), (b), (d), or (f) and who are not citizens of the United States; or
- f) an entity that is a not-for-profit organization and that, by virtue of that status, is generally exempt from income taxation in its Contracting State of residence, provided that more than half of the beneficiaries, members or participants, if any, in such organization are persons that are entitled, under this Article, to the benefits of this Convention.

2) A person that is not entitled to the benefits of this Convention pursuant to the provisions of paragraph 1 may, nevertheless, be granted the benefits of the Convention if the competent authority of the State in which the income in question arises so determines.

3) For the purposes of paragraph 1, the term “recognized stock exchange” means:

- a) the NASDAQ System owned by the National Association of Securities Dealers, Inc. and any stock exchange registered with the Securities and Exchange Commission as a national securities exchange for purposes of the Securities Exchange Act of 1934; and
- b) any other stock exchange agreed upon by the competent authorities of the Contracting States.

4) The competent authorities of the Contracting States shall consult together with a view to developing a commonly agreed application of the provisions of this Article. The competent authorities shall, in accordance with the provisions of Article 26 (Exchange of Information), exchange such information as is necessary for carrying out the provisions of this Article and safeguarding, in cases envisioned therein, the application of their domestic law.”