

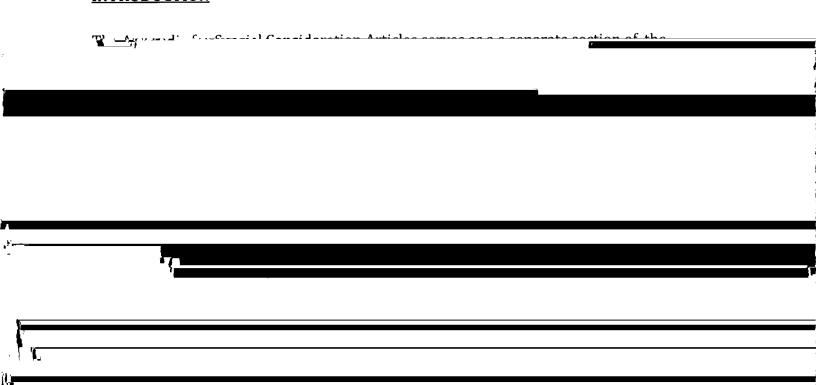
PREAMBLE

At the Fourth meeting of the UN Committee of Experts on International Cooperation in Tax
Matters in October of 2008, the Secretariat indicated that the development of this section of
the Manual "with a practical and solutions oriented focus" was very important and
would be very valuable. It was also stated that "the Manual needed, for full impact, to be
an interactive wish based product "? At the conclusion of the discussion recording the new

structure of the Manual, the suggested general format of the Manual, including this section was approved.

Further, it was requested at the closing meeting of the meeting that a first step towards implementation of this section of the newly formatted Manual would be the suggestion of a protocol whereby articles will be selected for inclusion. The following discussion is a preliminary proposal, mostly in general terms, to begin the discussion and evolution of such a protocol.

INTRODUCTION

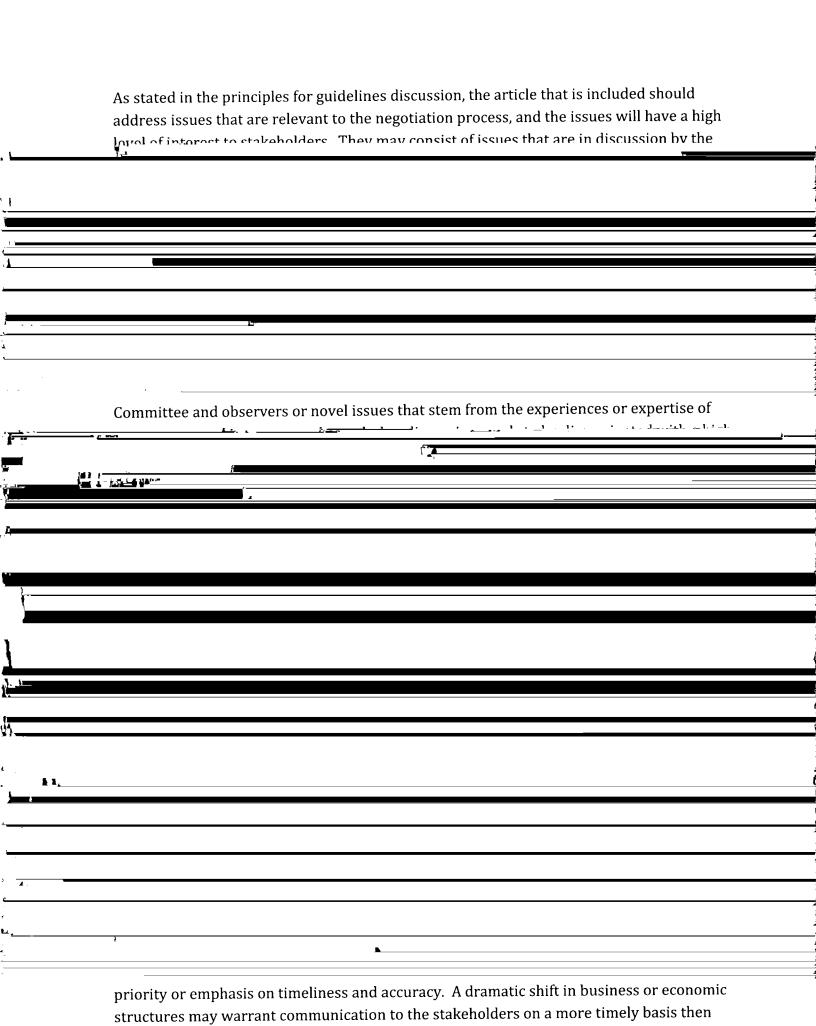


Typically, the articles included in this section would arise from discussions at meetings of the Committee of Experts on International Cooperation in Tax Matters, but it is proposed that such articles could be proposed outside that specific venue, according to protocols agreed to by the Committee members.

enhanced with, and in some cases compromised without the availability of articles such as these. The manual should be both timely and accurate. If significant issues such as these are not available for guidance, the usefulness of the manual, their integrity or accuracy, may be sacrificed. The same result obtains if such information cannot be added on a timely basis. It would appear appropriate to have a designated repository for this type of article, a

	GUIDELINE	S: A PROPOSAL
	The followir	ng are very preliminary, but could serve as a starting point for the discussion:
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		oriented focus.
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	b.	The articles should preserve and strengthen the integrity and accuracy of the Manual and the Commentaries.
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particular inquiry. The information must be timely and accurate. f. The submission process should be transparent to and accessible by g. interested parties.



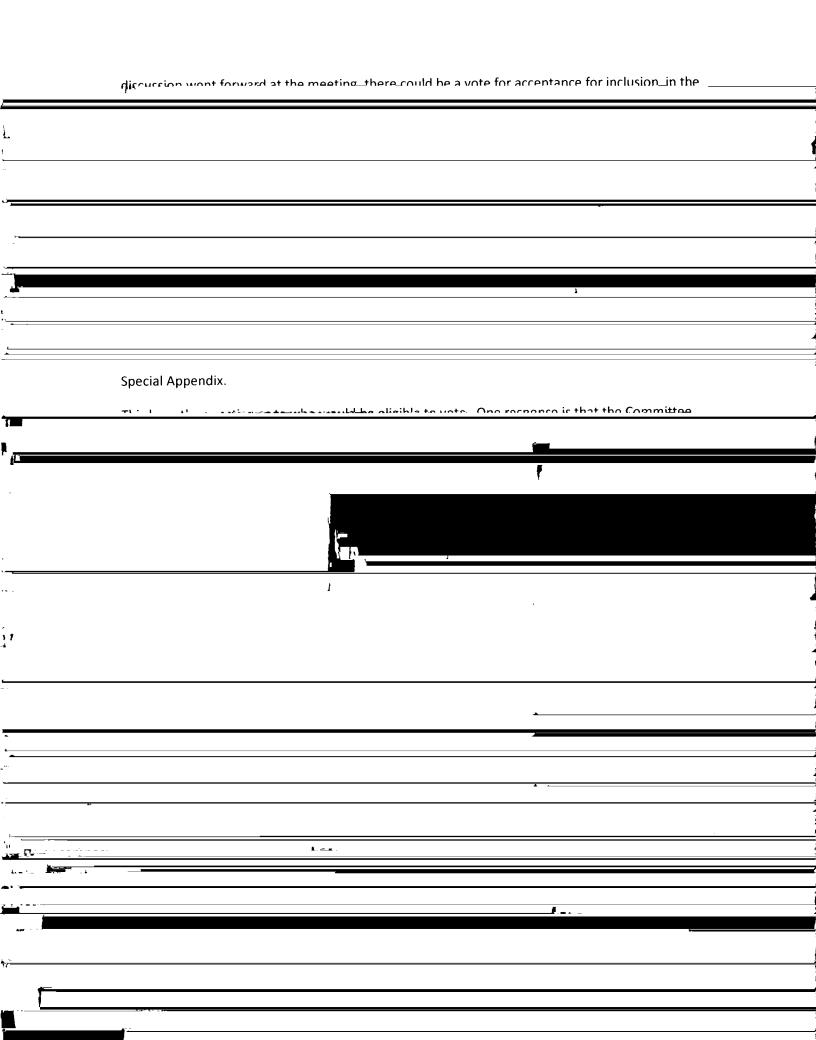
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1.Draft report of the Fourth Meeting of the UN Committee of Experts on International Cooperation in Tax Matters, paragraph 65, E/C18/2007/19

2.Draft report of the Fourth Meeting of the UN Committee of Experts on International

³ Ms. Ayala, statement made by Ms. Ayala during Manual Revision Subcommittee discussions, regarding proposal for a Mission Statement.

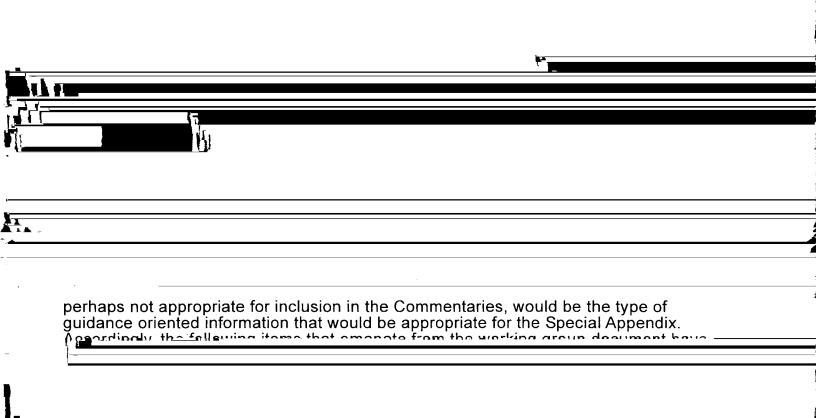
	United Nations Manual for the Negotiation of Bilateral Tax Treaties between Developed and Developing Countries
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	A Proposed Timeline for Submission and Consideration of Articles for the Appendix for Special
	Consideration Articles Revised for Comments Received up to October 1, 2009
<u></u>	As has generally been an issue, timeliness of submission of articles for inclusion in the proceedings of
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ISLAMIC FINANCIAL INSTRUMENTS

TREATMENT OF ISLAMIC FINANCIAL INSTRUMENTS UNDER THE UNITED NATIONS MODEL DOUBLE TAXATION CONVENTION BETWEEN DEVELOPED AND DEVELOPING COUNTRIES'

At the Third session of the Committee one of the items discussed was the taxation of income from Islamic financial instruments. The working group document stated, in its Summary that the "... current drafting of the United Nations Model Double Taxation Convention between Developed and Developing Countries seems to be capable to deal with Islamic financial instruments, but some language could be included in commentary to provide that the definition of interest would include income from some types of Islamic financial arrangements..." At different points after the Working Group



Profits and losses are split according to a pre-agreed formula.

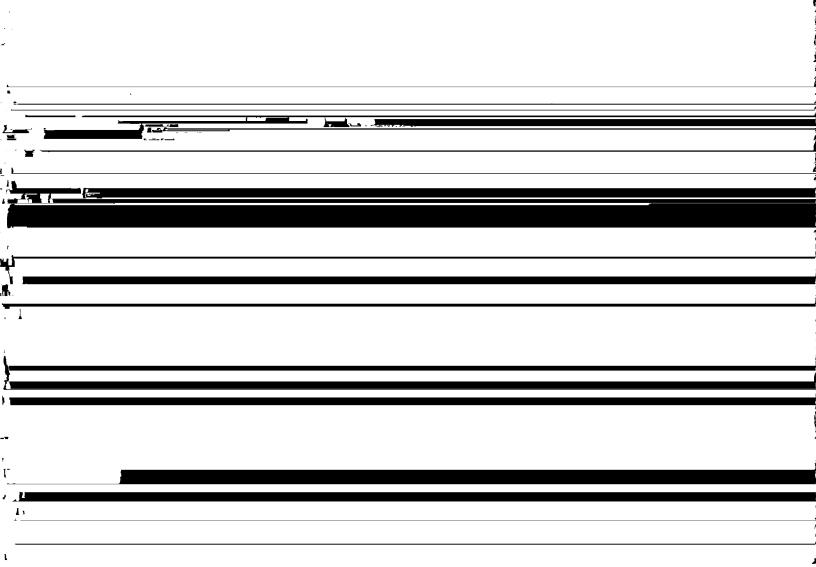
A variation of this arrangement is the "diminishing musharaka" that is a partnership type arrangement that provides for a gradual buyout of one or more of the partners.

In the context of such an arrangement, the profit/loss sharing ratio does not have to reflect the same ratio as the investment ratio. Similar to the partnership rules in the United States tax law, the agreement of the partners is deciding, and as long as there is agreement, generally, the discrepancy between the two ratios is valid.

Mudaraba

This arrangement is characterized as an "investment partnership"xii where the investor agrees to provide money to another party, an entrepreneur, in order to invest the funds or to undertake a business venture. Profits are distributed on the basis of a pre-agreed formula, while losses are born solely by the investor partner.

The profit sharing scheme is described as perfectly sharia compliant.xiii The scheme is described as: a depositor deposits money with a financial institution (3p. |s|amic bank), which would be used by the institution with the intent to



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	lessor. The essential rules for a basic Ijara transaction includexvii: 1. The term of the lease and consideration must be specified.
	2. Liabilities given rise through the use of the asset/property will be the
	responsibility of the lessee. Liabilities surfacing from the ownership of the
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In Islam, there are three mandatory elements to a sale in order for it to be legitimate. At the time of sale, the product 1: must exist, 2: the seller must own it, and 3: it must be in the seller's possession. The only two exceptions to this nearly rule are the contracts of salam and istisna. Historically the salam

arrangement was used in situations where the seller of the commodity needed the cash to finance the production of the commodity. One example of such a

and hammanting of a rean XX The handit to the hunor was generally realized in

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a'a see the same as the see for the sections		generally applies to manufactured commodities.*xiii The requisite elements and
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ool, offers forth the currently prevailing opinion		The fourth school, the Hanafi school, offers forth the currently prevailing opinion
		The fourth school, the Hanafi school, offers forth the currently prevailing opinion that the istisna'a and salam are separate and distinct forms of contract. The
eparate and distinct forms of contract. The		
eparate and distinct forms of contract. The primarily: advance payment is not a condition		that the istisna'a and salam are separate and distinct forms of contract. The
eparate and distinct forms of contract. The primarily: advance payment is not a condition by is not necessarily fixed in the terms of the		that the istisna'a and salam are separate and distinct forms of contract. The differences between the two are, primarily: advance payment is not a condition of the istisna'a, the time of delivery is not necessarily fixed in the terms of the
eparate and distinct forms of contract. The primarily: advance payment is not a condition ry is not necessarily fixed in the terms of the sential in the salam contract, and once signed,		that the istisna'a and salam are separate and distinct forms of contract. The differences between the two are, primarily: advance payment is not a condition

to the amount of the asset investment in the same proportion that is represented by the holders subscription to the total asset investment.**xv A primary purpose of this arrangement is to spread the risk of the investment. Ownership shares in

subscribers as a way to generate the capital and spread the risk. The subscribers then share in the profits. The arrangement, in its pure form, is likened to a western joint stock company.**xvi

The manufacture manufacture different forms. The manufacture or formition forms and the

the discussion of whether or not the certificates themselves can be sold. While the debate continues, it appears that most scholars of Islamic financial arrangements take the position that the certificates cannot be transferred as they represent future interests in a commodity that has not been reduced to possession by the purchaser in the salam contract.**

Istisna'a sukuk***

The istisna'a involves financing a project consisting of manufacturing or constructing an asset at a price to be paid in future installments. The total amount of these installments includes a profit margin. The istisna'a sukuk is a fractional share in the istisna'a project financing.

The project customer provides the Islamic bank (the capital source) with the details of the project and the bank then engages contractors to submit

product and the payment schedule which covers their costs and a profit margin. The bank issues the sukuk certificates based on the expected future income streams from the project.

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	fixed income stream. The ijara sukuk represents a fractional ownership in
	this income attacks
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	Since the ijara sukuk represent an ownership in an existing tangible asset
	it may be traded in a secondary market.
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vi E/c.18/2007/9, "Summar vii "Islamic Banking and A	ccounting," a research paper subm	nitted by Ms. Sarah Tantawy	in partial fulfillment of a course	for
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UN MODEL TREATY

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2001 U.N. Model Income and Capital Tax Convention

PUBLICATION-DATE: January 11, 2001

2001 WTD 116-41; Doc 2001-16597

2001 U.N. Model Income and Capital Tax Convention

TEXT:

CONVENTION BETWEEN (STATE A) AND (STATE B) WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL ${\mathfrak n}{\mathfrak l}$

Preamble of the Convention n2

Chapter I

Scope of the Convention

Article 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

Taxes Covered

(a) The term "person"(b) The term "compan			a body corporate for tax purposes;
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enterprise carried on Contracting State;	by a resident of a Contracting	g State and an enterprise	carried on by a resident of the other
(d) The term "internat	tional traffic" means any transpo	ort by a ship or aircraft ope	rated by an enterprise that has its place is operated solely between places in the
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1 For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through

which the business of an enterprise is wholly or partly carried on.

- 2. The term "permanent establishment" includes especially:
- (a) A place of management;
- (b) A branch;
- (c) An office;
- (d) A factory;
- (e) A workshop;
- (f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- 3 The term "permanent establishment" also encomnasses:
- (a) A building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last more than six months;
- (b) The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only if activities of that nature continue (for the same or a connected project) within a Contracting State for a period or periods aggregating more than six months within any twelve-month period.
- 4. Notwithstanding the preceding provisions of this article, the term "permanent establishment" shall be deemed not to include:
- (a) The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

	(a) Has and habitually exercises in that State an authority to conclude contracts in the name of the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
	(b) Has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from
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	6. Notwithstanding the preceding provisions of this article, an insurance enterprise of a Contracting State shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated therein through a person other than an agent of an independent status to whom paragraph 7 applies.
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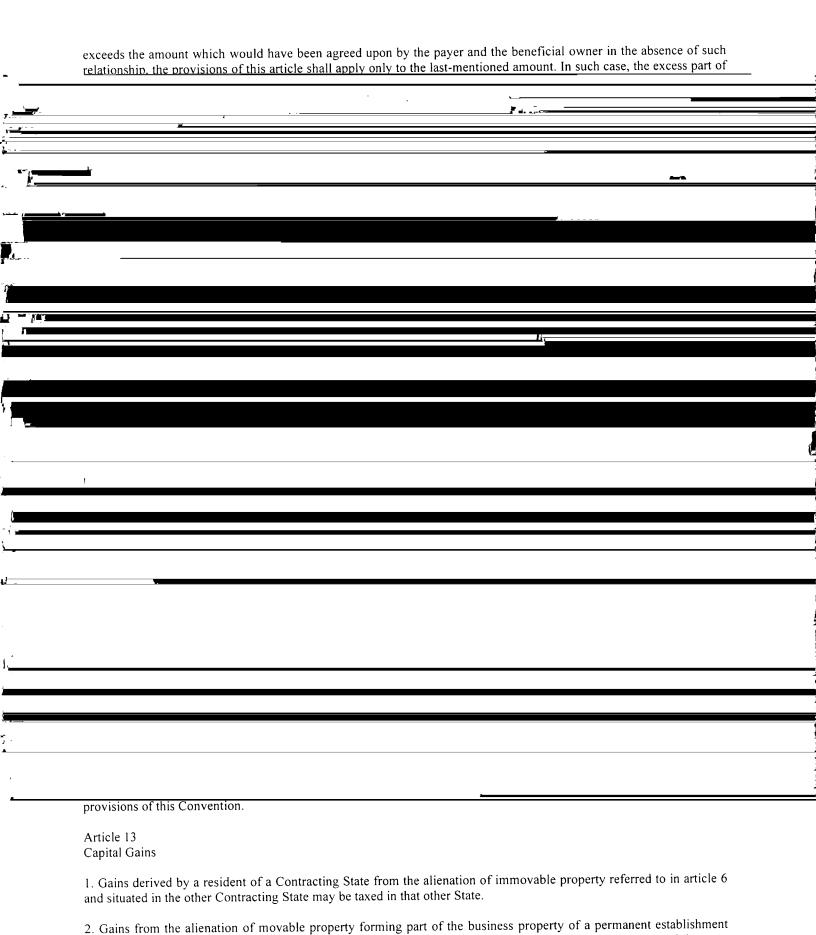
similar kind as those sold through that permanent establishment; or (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment. 2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate t independently with the enterprise of which it is a permanent establishment.

	4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.
	Article 8 (Alternative B)
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	place of effective management of the enterprise is situated.

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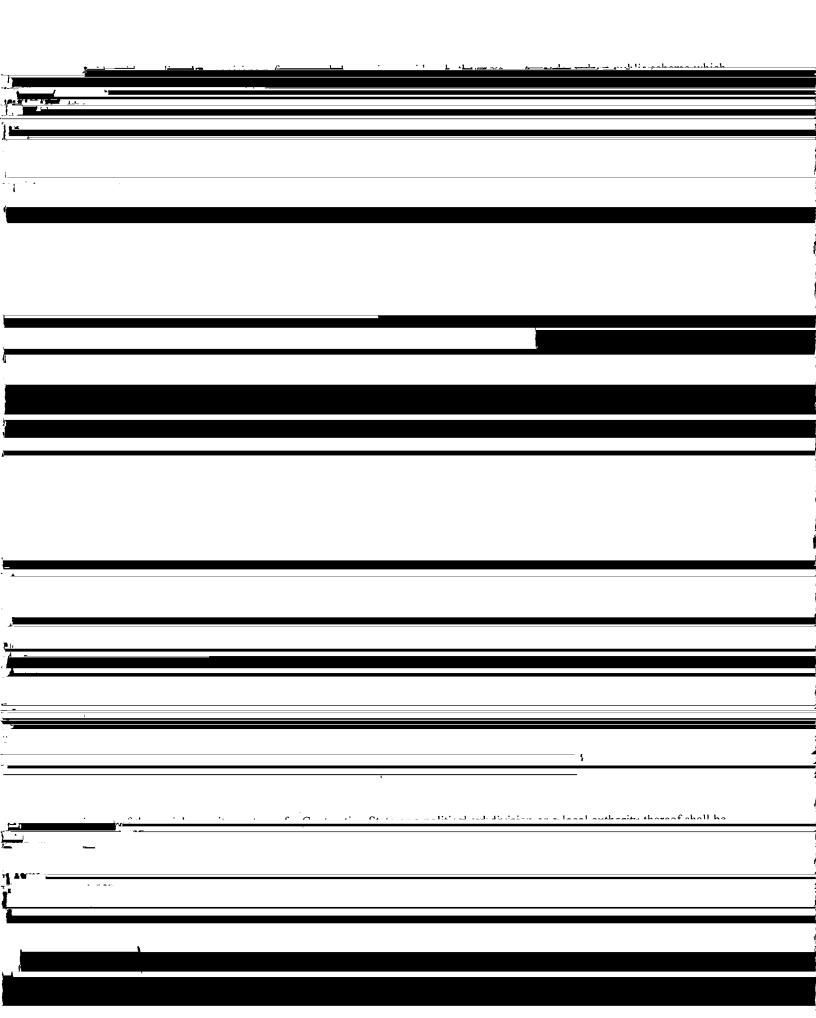
Dividends 1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State. 2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a

securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this article. 4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the interest, being a resident of a



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2. The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants. Article 15 Dependent Personal Services 1. Subject to the provisions of articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is may be taxed in that other State.



	2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in
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	the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the
	income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of article 14, as the case may be, shallapply.
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	3. Notwithstanding the provisions of paragraphs 1 and 2, items of income of a resident of a Contracting State not dealt with in the foregoing articles of this Convention and arising in the other Contracting State may also be taxed in that other State.
	Chapter IV Taxation of Capital
	Article 22 Capital
	1. Capital represented by immovable property referred to in article 6, owned by a resident of a Contracting State and

	taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the
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	resident or, if his case comes under paragraph 1 of article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
	The permetant authority shall and account if the chiestian anneaus to it to be instified and if it is not itself able to

	Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.
	Chapter VII Final Provisions
	Article 28 Entry Into Force
	1. This Convention shall be ratified and the instruments of ratification shall be exchanged at as soon as possible.
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