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# Inter-American Bar Association

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## INTER-AMERICAN BAR ASSOCIATION

JOHN O. DAHLGREN

*Secretary-General  
Inter-American Bar Association*

### XVII CONFERENCE

The IABA Executive Committee has recently accepted an invitation from the *Colegio de Abogados de Quito*, a member association of IABA, to hold the XVII Conference in Quito, Ecuador. The exact dates have not been fixed but the Conference will probably be held around the end of May or early in June of 1972. Ecuador will be celebrating the 150th anniversary of its independence during 1972.

This will be the first meeting of the Inter-American Bar Association in Ecuador and the host association, with Dr. Marco Tulio González as President, as well as other IABA members in Ecuador, have offered all cooperation in order to make the Conference an outstanding success. A most interesting local program is already being planned which will probably include a visit to the Galapagos Islands.

The Council of IABA is considering holding a meeting not later than next November to discuss the organizational plans for the Conference.

### COMMITTEE STRUCTURE

The following is the Committee structure for the XVII Conference, as revised and approved by the Council of the Association at its meeting in Cartagena, Colombia, October 9-12, 1970:

#### COM. I — PUBLIC INTERNATIONAL LAW

- Section A. Oceanography and the Law of the Sea
- Section B. United Nations and Hemispheric Organizations
- Section C. Juridical Defense of Western Democracy
- Section D. Inter-American Air Law

#### COM. II — PRIVATE INTERNATIONAL LAW

- Section A. International Judicial Procedure

**COM. III — CONSTITUTIONAL LAW**

Section A. Defense of Independence of the Judiciary and Irremovability of Judges

Section B. Delay and Congestion in the Courts

Section C. Constitutional Problems of Latin American Integration

**COM. IV — MUNICIPAL LAW**

Section A. Housing Law

**COM. V — CIVIL LAW**

Section A. Persons, Family and Succession

Section B. Intellectual and Industrial Property

Section C. Civil Liability

**COM. VI — CIVIL AND COMMERCIAL PROCEDURE**

Section A. Inter-American Commercial Arbitration

**COM. VII — COMMERCIAL LAW**

Section A. Banking Laws and Trust

Section B. Transportation and Communications

Section C. Corporation Law

Section D. Insurance

Section E. Bankruptcy

**COM. VIII — CRIMINAL LAW AND PROCEDURE****COM. IX — ADMINISTRATIVE LAW AND PROCEDURE****COM. X — FISCAL LAW**

Section A. Taxation

Section B. Customs Law

**COM. XI — LEGAL ASPECTS OF DEVELOPMENT AND INTEGRATION**

Section A. Legal Aspects of Economic Development and Integration

Section B. Labor Law

Section C. Monopoly and Restrictive Commercial Practices

**COM. XII — LEGAL EDUCATION**

Section A. Inter-American Academy of International and Comparative Law

Section B. Deans of Law Schools in the Western Hemisphere

**COM. XIII — LEGAL DOCUMENTATION**

COM. XIV — ACTIVITIES OF LAWYERS

- Section A. Professional Standards of Conduct
- Section B. Assistance and Social Security for Lawyers
- Section C. Legal Aid

COM. XV — NATURAL RESOURCES

- Section A. Oil and Gas Laws
- Section B. Laws Concerning Agriculture

COM. XVI — SPACE LAW

- Section A. Space Communications

COM. XVIII — HUMAN RIGHTS

- Section A. Court on Human Rights in America

COM. XIX — FOOD AND DRUG LAW

COM. XX — NUCLEAR LAW

COM. XXI — YOUNGER LAWYERS

*Note:* Section A of several Committees formerly designated "General Problems" has been deleted. The subject matter of General Problems will be considered, in the future, by the Committee as a whole.

MODEL TREATY TO AVOID DOUBLE TAXATION

Considerable work has been accomplished by previous Conferences of the Inter-American Bar Association on the subject of double taxation. A model international treaty to avoid the effect of double taxation, submitted by Section A. Taxation, of Committee X, based on a draft presented by Dr. Manuel de Juano, of Rosario, Argentina, was approved by the XVI Conference held in Caracas, Venezuela, November 1969.

The text of the approved model treaty is as follows:

FORM OF INTERNATIONAL TAX AGREEMENT

The Government of ..... and the Government of ..... wishing to enter into an agreement to prevent double imposition with respect to taxes on ..... and taxes on ..... have appointed their respective plenipotentiaries:

For the Government of .....: .....

For the Government of .....: ..... who after exchanging their full powers, having found them in good order, have agreed as follows:

ARTICLE I. — The taxes subject matter of this agreement are:

In .....: .....

In .....: .....

This agreement shall be applied, also by mutual accord, to any other taxes essential in nature and economically analogous which, after the date of execution of this agreement, may be legislated by either of the contracting States.

The competent tax authorities of the contracting governments must keep themselves informed of significant changes in the tax laws of their respective territories and, in the event of planning appreciable modifications on such laws, said governments shall consult each other to determine what changes should be introduced to this agreement.

ARTICLE II. — A) For the purposes of this agreement and unless specific indication to the contrary in its context, the following specifications shall be considered:

a) The terms "One of the contracting states (or governments)" and "the other contracting state (or government)" shall be used to designate ..... or ....., ..... as provided in the text.

b) The expressions "Territory of one of the contracting governments" and "Territory of the other contracting government" mean ..... or as provided in the text.

c) The word "Taxation" means taxation on ..... or taxation on ....., as indicated in the text.

d) The word "person" shall be used to designate:

- 1. A natural person
- 2. A juridical person
- 3. Any group of persons whether associated or not, subject to tax liabilities.

e) The word "Company" shall be used to designate any association or entity considered as an association for tax purposes.

f) The expressions "Resident of ....." and "Resident of ....." respectively mean any person who is a resident of ..... to the effects of taxation on ..... and not a resident of ..... to the effects of taxation on .....

A company shall be considered as a resident of ..... if it has been organized under the laws of ..... or, it being not thus organized, its business are managed, controlled and/or administered in ....., and as a resident of ..... if it has been organized under the laws of ..... and if, not being so organized, its businesses are managed, controlled and/or administered in .....

g) The expressions "Enterprise of the ..... party" and "Enterprise of the ..... party" respectively mean an industrial or commercial enterprise carried on in ..... by a resident of .....; and the terms "Enterprise of one of the contracting governments" and "Enterprise of the other contracting government" mean an ..... or an ..... enterprise, as indicated in the context.

h) The expression "Permanent establishment" means a fixed place of commercial or industrial operation wherein the businesses of the pertinent enterprise are totally or partially carried out on a permanent basis. To that effect it shall be considered that "Permanent establishment" is, specifically:

1. A management center or a place of management.
2. A branch or any other fixed place of business wherein the activities of the enterprise are carried on in whole or in part.
3. A factory.
4. A workshop.
5. An office.
6. A mine, quarry or any other location wherein natural resources are mined.

It is not considered "permanent establishment", for example:

1. The use of premises occupied only for purposes of storage, exhibition or delivery of goods or merchandise owned by the enterprise; that is, when no sale operations are carried out in the country wherein such premises are located.

2. The mere maintenance of a stock of goods or merchandise owned by the enterprise for the sole purposes of storage, exhibition, or delivery; that is provided that no sale operation is carried out in the country wherein such goods or merchandise are located.

3. The maintenance of merchandise or other goods, previously sold, until said merchandise or goods are delivered to the purchaser.

4. The maintenance of a fixed place of business only for purposes of the acquisition of good or merchandise, or to obtain information thereto for the enterprise.

5. The maintenance of a fixed place of business only for purposes of publicity, information and scientific investigation, or similar activities of a preliminary or auxiliary nature, for the enterprise.

A person acting in the territory of one of the contracting governments on behalf of an enterprise of the other contracting government, shall be deemed a "Permanent establishment" in the firstly mentioned territory if it has authority and exercises it customarily in said territory to conclude contracts on behalf of the enterprise, unless its activities are limited to the purchase of goods and merchandise for said enterprise.

For fiscal purposes, permanent establishments must be organized under condition that the bookkeeping thereof be kept separate from commercial or industrial entities internationally connected, all this notwithstanding the possibility of allowance for corrective measures arising out of the application of a taxation criteria of unity of the taxpayer or of economic groups.

i) The terms "site of the source" or "country of the source" indicate the territory of the contracting state within which is located the tangible or intangible sign of wealth that is economically suitable to generate the income, benefit or increment subject to tax.

j) The expression "competent authority" means, in the case of the ..... party, the ..... and in the case of the ..... party, the .....

B. k) In the application of the provisions of this agreement by either of the contracting states, any expression not precised in it will have, unless otherwise indicated in the context, the same meaning as in the legislation in force of the respective contracting state, in what refers to the taxes subject matter of this agreement.

ARTICLE III. — The benefits out of commercial or industrial activities, undertakings or operations of any kind (including financial or insurance activities), might be subject to taxation by any of the contracting states, provided, however; that the activity, undertaking or operation keeps a permanent establishment within said state in accordance with the general principles established in items 2, 3 and 4 of this article.

2. In the case of an enterprise of one of the contracting governments carrying on business in the territory of the other contracting government through a "Permanent establishment" therein located, there should be attributed to said establishment the benefits that it could normally expect if it were an independent enterprise dedicated to the same or similar conditions, and acting independently from the enterprise to which it belongs.

3. In the determination of taxable profits of a "permanent establishment" deduction of all expenses such as general fixed expenses wherever incurred shall be allowed insofar as they were necessary for said permanent establishment, provided, however, that they have a reasonable relationship with the benefits or activities of said establishment.

4. If because of deficiencies in accounting entries and/or documentation of a "permanent establishment", or because of the attitude of the taxpayer the pertinent tax authority could not determine the benefits attributable to the first, said authority shall be fully authorized to apply the law in force in the country to the extent necessary to enable it to determine the responsibility of the enterprise with respect to payment of the pertinent tax, on the basis of the taxable amount officially fixed or estimated by the pertinent tax authority according to the law in force in its territory. Said determination shall be exercised by each contracting state in accordance with the general principle of points 1 and 2 above.

ARTICLE IV. — Whenever an enterprise of one of the contracting states has direct or indirect participation in the management, administration, direction, controllership or capitalization of an enterprise of the other contracting state, or when the same persons have direct or indirect participation in the management, administration, direction, controllership or capitalization of an enterprise of one of the contracting state and in an enterprise of the other contracting state, and if in such cases it is proved that commercial or financial relations exist between both enterprises under conditions other than these usual between independent enterprises, or which differ from conditions that should exist between independent enterprises, the following fiscal treatment shall be adopted:

All profits which, but for the existence of said conditions would have been assigned to one of the enterprises, and due to the same have not been realized by it, may be included in the taxable profits of said enterprise.

ARTICLE V. — Income or benefits of any kind accrued from personal property and its accessories shall be taxable only in the state wherein they are located.



The terms "Personal property" and "Accessories" shall have the meaning given to them by the laws of the state wherein the goods referred to are located.

Every resident or entity of one of the contracting states earning income from real estate and its accessories located in the other contracting state may, at its option, ask that said income be taxed in the proportion of the amount of net income as if arising from a permanent establishment located in the country in question. The fiscal authorities of the contracting countries will furnish each other with the necessary elements and information to verify the exactness of the above mentioned net income.

ARTICLE VI. — Any royalty or other sum paid with respect to the operation of a mine or quarry, or whatever other use of natural resources within the territory of one of the contracting governments shall be taxable only in the territory of that contracting government.

Every resident or entity of one of the contracting states earning income out of royalties or other compensation paid with respect to the operation of a mine or whatever other use of natural resources within the other contracting state may, at its option, ask that said income be taxed in the proportion of the amount of net income as if arising from a permanent establishment located in the country in questions. The fiscal authorities of the contracting countries will furnish each other with the necessary elements and information to verify the exactness of the abovementioned net income.

ARTICLE VII. — Royalties obtained from sources located within the territory of one of the contracting governments which have to be paid to a resident or entity of the other contracting government, may be taxed only in the country of the source at a rate not to exceed .....

For purposes of this article "Royalty" shall mean any profit, return or amount paid for the use, or the privilege to use, royalties, patents, designs, secret proceedings or formulae, trademarks, or property of analogous nature.

ARTICLE VIII. — Dividends, interest on securities, guaranties, promissory notes, obligations (debentures), or whatever other form of credit obtained from sources located within the territory of one of the contracting governments, may only be taxed in that territory at a rate not to exceed .....

ARTICLE IX. — Capital gains obtained from the sale, transfer or exchange of capital goods, personal or real, may be taxed only in the

territory wherein such properties have been located, placed or economically disposed of.

Capital gains obtained from the sale, transfer or exchange of bonds, shares and bearer securities shall be tax exempt in both contracting states.

ARTICLE X. — 1. Salaries, wages, benefits, remunerations and similar compensations paid for services rendered by employees or by professionals, or personal services in general, shall be taxable only in the territory wherein such services are rendered, except for that which is stated in items second and third of this article.

2. Salaries, wages and similar compensation paid by one of the contracting governments or by its administrative divisions for services rendered to that government in the exercise of official duties shall be taxable only by the latter.

The specifications of this subparagraph shall not be applicable to salaries or similar compensation paid for services rendered in relation to any commerce or business operated for profit by any one of the contracting governments.

3. Salaries, wages, benefits, remunerations or similar compensation paid by one contracting state to transitory or temporary residents shall not be taxable by that contracting State. For purposes of this article, transitory or temporary residents shall be considered the persons who, within the period of one year starting from the date of admittance to the respective State, have not resided in that State for a period or accumulative periods exceeding 180 days.

ARTICLE XI. — Pensions, annuities or periodic payments obtained from sources located in the territory of one of the contracting governments shall be taxable only by that contracting government.

The term "pension" in this article means a periodic payment effected in consideration of services rendered or as a method of compensation for damages; and the terms "annuities" and "periodic payments" mean a fixed amount to be paid in established installments during the taxpayer's lifetime or during a specified or determinable period of time to compensate for a counter-obligation realized in cash or estimated in money.

ARTICLE XII. — Every resident of one of the contracting governments who, invited by the other contracting government or by a University, College, School, Museum or other cultural institution located in territory of the latter, or who as a result of an official program of cultural interchange visits that territory only for purposes of teaching, or to deliver lectures, or to carry out investigations and/or artistic activities in such

institutions for a period not exceeding eighteen months, shall be exempt, in the last mentioned territory, of taxes on his remuneration for such activity and on the amounts he may perceive from abroad for personal expenses up to a reasonable amount.

The exemption mentioned in this article shall not be applied to a citizen of ..... who is a resident of ..... at the beginning of the abovementioned period, or to a citizen of ..... who is a resident of ..... at the beginning of said period of time.

**ARTICLE XIII.** — Whenever a natural person of the territory of one of the contracting governments resides temporarily in the territory of the other contracting government

- a) as student of a University, College or School of that other territory
- b) as a business trainee
- c) as recipient of a scholarship, allowance or premium granted with the fundamental purposes of study or investigation by a religious, beneficiary, scientific or educational organization, said person might not be taxed in the last territory for the remittances from abroad designated for his support, education and training.

Whenever a natural person of the territory of one of the contracting governments is present in the territory of the other contracting government solely as a student of a University, College or School of said other territory or as technical trainee or professional, he shall not be taxed in the latter territory for a period not exceeding three continuous fiscal years in relation to his remuneration for services rendered therein, provided that:

- a) The remuneration constitutes income necessary for his subsistence and education, and
- b) That said remuneration does not exceed ..... or its equivalent in .....

**ARTICLE XIV.** — Whenever both or any one of the contracting governments imposes tax on capital, the following regulations shall be considered:

1. Capital represented by real estate shall be taxable only in the territory of the contracting government wherein said real state is located.
2. Every element of capital located in the territory of one of the contracting governments shall be taxable only in said territory.

3. In accordance with the provisions of items 1 and 2 above, the capital represented by assets, which is a part of the property used in a permanent establishment of an enterprise, shall be taxable only in the territory of the contracting government wherein the establishment is located.

4. The shares, securities and bearer securities shall be exempt from taxes applicable to capital in both contracting states.

ARTICLE XV. — The competent authorities of the contracting governments shall interchange all information necessary as permitted by their respective legislations, for the best execution of the provision of this agreement or to prevent fraud or evasion or, finally, for the application of the provisions in force relative to the subject matter of this agreement, except for authorization of the informing government. Any information so interchanged shall be secret and should not be transmitted to any person not connected with the determination and collection of the taxes subject matter of this agreement. Information that may reveal any commercial, industrial or professional secret, or commercial procedures, or specific information about citizens or companies of the contracting states, shall not be interchanged.

The competent authorities of the contracting governments may have direct communication among them for the purpose of carrying out the provisions of this agreement.

ARTICLE XVI. — Income and capital of transitory residents of any of the contracting countries, represented by money, jewelry, and personal valuables shall not be subject to tax in the country wherein the transitory residence is registered if such transitory resident's domicile is established in the other contracting country. Transitory resident shall be understood to be every person who remains in a country for not more than 180 days during a fiscal year.

ARTICLE XVII. — Whenever a contracting estate imposes a tax by reason of the nationality, domicile or residence of the taxpayer on income the source of which is in the territory of the other contracting state, the first contracting state shall grant the taxpayer a credit against said tax, equivalent to the taxes paid on said income in the second contracting state.

ARTICLE XVIII. — The same credit shall be allowed under the same circumstances over those taxes which should have been paid in the second contracting state but for exemption granted by the legislation of

the country of the source of income, provided the amount of credit has been legally established and certified by the fiscal authority of said state.

**ARTICLE XIX.** — Whenever the taxpayer proves that the action of the fiscal authorities of any of the contracting governments causes or may cause double taxation or an imposition contrary to the provisions of this agreement, he shall have the right to submit the situation to the competent authority of the contracting government of the territory wherein he is a resident. If the claim is successful, the competent authority to whom the facts were submitted should attempt to come to an agreement with the competent authority of the other contracting government with a view to preventing the questioned taxation.

In the same manner the taxpayers may also collaborate with the pertinent fiscal authorities to introduce any information that could help in the determination of the bases of taxation relative to each of the contracting states.

**ARTICLE XX.** — This agreement shall be executed by the contracting governments in accordance with their respective constitutional and legal requirements.

The instruments of execution shall be exchanged in .....  
as soon as possible.

After the instruments of execution are exchanged, this agreement shall become effective and shall be applied to:

- a) Income earned from January 1st of the calendar year next after the year of execution.
- b) All other taxes to be paid for the fiscal year of 19.....

**ARTICLE XXI.** — This agreement shall continue in force and effect indefinitely, but any of the contracting governments may terminate it by written notice to the other contracting government from January 1st to June 30 of any calendar year, and in such case the agreement shall become ineffective:

- a) with respect to income earned from January 1st of the calendar year next after the year of said notice;
- b) with respect to taxes whose liquidation is due on the first fiscal year starting from January 1st of the calendar year next after the notice has been issued.

IN WITNESS WHEREOF, the respective plenipotentiaries have hereunto affixed their signatures and seals.

EXECUTED in ..... this ..... day of ....., 19.....  
in ..... copies in the ..... language, and .....  
copies in the ..... language, being all the .....  
copies equally authentic.