

**EXPLANATION OF PROPOSED PROTOCOL
TO THE INCOME TAX TREATY BETWEEN
THE UNITED STATES AND FRANCE**

Scheduled for a Hearing

Before the

COMMITTEE ON FOREIGN RELATIONS
UNITED STATES SENATE

On February 2, 2006

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



January 26, 2006
JCX-2-06

CONTENTS

	<u>Page</u>
INTRODUCTION	1
I. SUMMARY	2
II. OVERVIEW OF U.S. TAXATION OF INTERNATIONAL TRADE AND INVESTMENT AND U.S. TAX TREATIES	3
A. U.S. Tax Rules	3
B. U.S. Tax Treaties	5
III. OVERVIEW OF TAXATION IN FRANCE	7
A. National Income Taxes	7
B. International Aspects of Taxation in France	9
C. Other Taxes	11
IV. EXPLANATION OF PROPOSED PROTOCOL	12
Article I. Resident	12
Article II. Dividends	15
Article III. Pensions	16
Article IV. Public Remuneration	18
Article V. Relief From Double Taxation	18
Article VI. Miscellaneous Provisions	18
Article VII. Entry Into Force	20
V. ISSUES	21
A. Expatriation to Avoid Tax by Former U.S. Citizens and Long-Term Residents	21
B. U.S. Model Income Tax Treaty	23

INTRODUCTION

This pamphlet,¹ prepared by the staff of the Joint Committee on Taxation, describes the proposed protocol to the existing income tax treaty between the United States and France (the “proposed protocol”). The proposed protocol was signed on December 8, 2004. The Senate Committee on Foreign Relations has scheduled a public hearing on the proposed protocol for February 2, 2006.²

Part I of the pamphlet provides a summary of the proposed protocol. Part II provides a brief overview of U.S. tax laws relating to international trade and investment and of U.S. income tax treaties in general. Part III contains a brief overview of French tax laws. Part IV contains an article-by-article explanation of the proposed protocol. Part V contains a discussion of issues relating to the proposed protocol.

¹ This pamphlet may be cited as follows: Joint Committee on Taxation, *Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and France* (JCX-2-06), January 26, 2006.

² For a copy of the proposed protocol, see Senate Treaty Doc. 109-4.

I. SUMMARY

The principal purposes of the existing treaty between the United States and France are to reduce or eliminate double taxation of income earned by residents of either country from sources within the other country and to prevent avoidance or evasion of the taxes of the two countries. The existing treaty also is intended to promote close economic cooperation between the two countries and to eliminate possible barriers to trade and investment caused by overlapping taxing jurisdictions of the two countries.

The existing treaty was signed in 1994. The treaty is broadly similar to other U.S. income tax treaties, the 1996 U.S. model income tax treaty (the “U.S. model”), and the 1992 model income tax treaty of the Organization for Economic Cooperation and Development, as updated (the “OECD model”), with some substantive deviations from these treaties and models. The proposed protocol amends six articles of the existing treaty.

The proposed protocol would revise Article 4 (Resident) of the current treaty to clarify the meaning of “resident” in certain cases and address the treatment of cross-border investments made through partnerships and other similar forms of entity.

The proposed protocol would amend Article 10 (Dividends) of the existing treaty by expanding the class of shareholders eligible for the treaty’s 15-percent rate of U.S. withholding tax on dividends from real estate investment trusts (“REITs”). The provisions of the proposed protocol in this regard are similar to those included in other recent U.S. income tax treaties and protocols.

The proposed protocol replaces Article 18 (Pensions) of the current treaty, and provides rules for the taxation of pensions and social security benefits. The proposed protocol also makes changes to Article 19 (Public Remuneration) of the current treaty in coordination with the changes made to Article 18 (Pensions). Under the proposed protocol, the taxation of pensions paid by a treaty country (or political subdivision or local authority) for services rendered to such country (or political subdivision or local authority) is governed by the provisions of Article 18, regardless of whether the services are rendered in connection with a governmental function or a business carried on by such country. In addition, the proposed protocol would make technical conforming changes to Article 24 (Relief From Double Taxation) of the existing treaty, to reflect the changes that would be made by the proposed protocol to Article 18 (Pensions) and Article 19 (Public Remuneration) of the treaty, as described above.

The proposed protocol expands the “saving clause” provision in Article 29 (Miscellaneous Provisions) of the existing treaty to allow the United States to tax former long-term residents whose termination of residency has as one of its principal purposes the avoidance of tax. This provision allows the United States to apply amendments made in 1996 to the special tax rules under section 877 of the Code.³

³ References to “the Code” are to the U.S. Internal Revenue Code of 1986, as amended.

II. OVERVIEW OF U.S. TAXATION OF INTERNATIONAL TRADE AND INVESTMENT AND U.S. TAX TREATIES

This overview briefly describes certain U.S. tax rules relating to foreign income and foreign persons that apply in the absence of a U.S. tax treaty. This overview also discusses the general objectives of U.S. tax treaties and describes some of the modifications to U.S. tax rules made by treaties.

A. U.S. Tax Rules

The United States taxes U.S. citizens, residents, and corporations on their worldwide income, whether derived in the United States or abroad. The United States generally taxes nonresident alien individuals and foreign corporations on all their income that is effectively connected with the conduct of a trade or business in the United States (sometimes referred to as “effectively connected income”). The United States also taxes nonresident alien individuals and foreign corporations on certain U.S.-source income that is not effectively connected with a U.S. trade or business.

Income of a nonresident alien individual or foreign corporation that is effectively connected with the conduct of a trade or business in the United States generally is subject to U.S. tax in the same manner and at the same rates as income of a U.S. person. Deductions are allowed to the extent that they are related to effectively connected income. A foreign corporation also is subject to a flat 30-percent branch profits tax on its “dividend equivalent amount,” which is a measure of the effectively connected earnings and profits of the corporation that are removed in any year from the conduct of its U.S. trade or business. In addition, a foreign corporation is subject to a flat 30-percent branch-level excess interest tax on the excess of the amount of interest that is deducted by the foreign corporation in computing its effectively connected income over the amount of interest that is paid by its U.S. trade or business.

U.S.-source fixed or determinable annual or periodical income of a nonresident alien individual or foreign corporation (including, for example, interest, dividends, rents, royalties, salaries, and annuities) that is not effectively connected with the conduct of a U.S. trade or business is subject to U.S. tax at a rate of 30 percent of the gross amount paid. Certain insurance premiums earned by a nonresident alien individual or foreign corporation are subject to U.S. tax at a rate of one or four percent of the premiums. These taxes generally are collected by means of withholding.

Specific statutory exemptions from the 30-percent withholding tax are provided. For example, certain original issue discount and certain interest on deposits with banks or savings institutions are exempt from the 30-percent withholding tax. An exemption also is provided for certain interest paid on portfolio debt obligations. In addition, income of a foreign government or international organization from investments in U.S. securities is exempt from U.S. tax.

U.S.-source capital gains of a nonresident alien individual or a foreign corporation that are not effectively connected with a U.S. trade or business generally are exempt from U.S. tax, with two exceptions: (1) gains realized by a nonresident alien individual who is present in the

United States for at least 183 days during the taxable year, and (2) certain gains from the disposition of interests in U.S. real property.

Rules are provided for the determination of the source of income. For example, interest and dividends paid by a U.S. citizen or resident or by a U.S. corporation generally are considered U.S.-source income. Conversely, dividends and interest paid by a foreign corporation generally are treated as foreign-source income. Special rules apply to treat as foreign-source income (in whole or in part) interest paid by certain U.S. corporations with foreign businesses. Rents and royalties paid for the use of property in the United States are considered U.S.-source income.

Because the United States taxes U.S. citizens, residents, and corporations on their worldwide income, double taxation of income can arise when income earned abroad by a U.S. person is taxed by the country in which the income is earned and also by the United States. The United States seeks to mitigate this double taxation generally by allowing U.S. persons to credit foreign income taxes paid against the U.S. tax imposed on their foreign-source income. A fundamental premise of the foreign tax credit is that it may not offset the U.S. tax liability on U.S.-source income. Therefore, the foreign tax credit provisions contain a limitation that ensures that the foreign tax credit offsets only the U.S. tax on foreign-source income. The foreign tax credit limitation generally is computed on a worldwide basis (as opposed to a “per-country” basis). The limitation is applied separately for certain classifications of income. In addition, a special limitation applies to the credit for foreign taxes imposed on foreign oil and gas extraction income.

For foreign tax credit purposes, a U.S. corporation that owns 10 percent or more of the voting stock of a foreign corporation and receives a dividend from the foreign corporation (or is otherwise required to include in its income earnings of the foreign corporation) is deemed to have paid a portion of the foreign income taxes paid by the foreign corporation on its accumulated earnings. The taxes deemed paid by the U.S. corporation are included in its total foreign taxes paid and its foreign tax credit limitation calculations for the year in which the dividend is received.

B. U.S. Tax Treaties

The traditional objectives of U.S. tax treaties have been the avoidance of international double taxation and the prevention of tax avoidance and evasion. Another related objective of U.S. tax treaties is the removal of the barriers to trade, capital flows, and commercial travel that may be caused by overlapping tax jurisdictions and by the burdens of complying with the tax laws of a jurisdiction when a person's contacts with, and income derived from, that jurisdiction are minimal. To a large extent, the treaty provisions designed to carry out these objectives supplement U.S. tax law provisions having the same objectives; treaty provisions modify the generally applicable statutory rules with provisions that take into account the particular tax system of the treaty partner.

The objective of limiting double taxation generally is accomplished in treaties through the agreement of each country to limit, in specified situations, its right to tax income earned from its territory by residents of the other country. For the most part, the various rate reductions and exemptions agreed to by the source country in treaties are premised on the assumption that the country of residence will tax the income at levels comparable to those imposed by the source country on its residents. Treaties also provide for the elimination of double taxation by requiring the residence country to allow a credit for taxes that the source country retains the right to impose under the treaty. In addition, in the case of certain types of income, treaties may provide for exemption by the residence country of income taxed by the source country.

Treaties define the term "resident" so that an individual or corporation generally will not be subject to tax as a resident by both treaty countries. Treaties generally provide that neither country will tax business income derived by residents of the other country unless the business activities in the taxing jurisdiction are substantial enough to constitute a permanent establishment or fixed base in that jurisdiction. Treaties also contain commercial visitation exemptions under which individual residents of one country performing personal services in the other will not be required to pay tax in that other country unless their contacts exceed certain specified minimums (e.g., presence for a set number of days or earnings in excess of a specified amount). Treaties address passive income such as dividends, interest, and royalties from sources within one country derived by residents of the other country either by providing that such income is taxed only in the recipient's country of residence or by reducing the rate of the source country's withholding tax imposed on such income. In this regard, the United States agrees in its tax treaties to reduce its 30-percent withholding tax (or, in the case of some income, to eliminate it entirely) in return for reciprocal treatment by its treaty partner.

In its treaties, the United States, as a matter of policy, generally retains the right to tax its citizens and residents on their worldwide income as if the treaty had not come into effect. The United States also provides in its treaties that it will allow a credit against U.S. tax for income taxes paid to the treaty partners, subject to the various limitations of U.S. law.

The objective of preventing tax avoidance and evasion generally is accomplished in treaties by the agreement of each country to exchange tax-related information. Treaties generally provide for the exchange of information between the tax authorities of the two countries when such information is necessary for carrying out provisions of the treaty or of their domestic tax laws. The obligation to exchange information under the treaties typically does not require either

country to carry out measures contrary to its laws or administrative practices or to supply information that is not obtainable under its laws or in the normal course of its administration or that would reveal trade secrets or other information the disclosure of which would be contrary to public policy. The Internal Revenue Service (the “IRS”), and the treaty partner’s tax authorities, also can request specific tax information from a treaty partner. This can include information to be used in a criminal investigation or prosecution.

Administrative cooperation between countries is enhanced further under treaties by the inclusion of a “competent authority” mechanism to resolve double taxation problems arising in individual cases and, more generally, to facilitate consultation between tax officials of the two governments.

Treaties generally provide that neither country may subject nationals of the other country (or permanent establishments of enterprises of the other country) to taxation more burdensome than the taxation it imposes on its own nationals (or on its own enterprises). Similarly, in general, neither treaty country may discriminate against enterprises owned by residents of the other country.

At times, residents of countries that do not have income tax treaties with the United States attempt to use a treaty between the United States and another country to avoid U.S. tax. To prevent third-country residents from obtaining treaty benefits intended for treaty country residents only, treaties generally contain an “anti-treaty-shopping” provision that is designed to limit treaty benefits to bona fide residents of the two countries.

III. OVERVIEW OF TAXATION IN FRANCE⁴

A. National Income Taxes

Overview

France imposes four major categories of income taxes: corporation income taxes, individual income taxes, social levies, and payroll taxes. French tax law, like that of the United States, generally takes an expansive view of income including most economic benefits and capital gains. Timing and amounts of taxable income are generally determined by reference to commercial accounting rules. Although individuals resident in France are subject to tax on their worldwide income, corporations, wherever resident, are only subject to tax on income arising in France.

Individuals

Individuals resident in France are taxed on their worldwide income at progressive rates from zero to 48.09 percent.⁵ An individual's tax rate is determined by reference to the total income of the individual's tax household. French law defines a tax household as an individual, his or her spouse or registered domestic partner, and their children and other dependents. Dividends paid by domestic or foreign companies are subject to income tax only to the extent they exceed a threshold amount and only at one-half of their face value. Long-term capital gains on real property or corporate stock exceeding a threshold exempt amount, and interest paid on certain savings accounts, are eligible for taxation at a reduced rate of 16 percent. Short-term capital gains, realized on property held for less than two years, are generally taxed as ordinary income. Certain capital gains realized by small businesses are wholly exempt from tax.⁶

⁴ The information in this section relates to foreign law and is based on the Joint Committee staff's review of publicly available secondary sources, including in large part "French Taxation," a publication of the French Ministry of the Economy, Finance and Industry. The description is intended to serve as a general overview of French tax law as of 2005. This section also mentions some important modifications set forth in The 2006 Finance Law of December 30, 2005. This description may not be fully accurate in all respects, as many details have been omitted and simplifying generalizations made for ease of exposition.

⁵ The 2006 Finance Law of December 30, 2005, reduces the number of income tax brackets from seven to five and the top income tax rate to 40 percent. It abolishes the 20-percent exemption on salaries and pensions, which applied to a certain portion of the taxpayer's annual salary or pension. These income tax rates will apply to income tax payable in 2007 on 2006 income.

⁶ The 2006 Finance Law of December 30, 2005 introduces a ceiling on direct taxes paid to the State (personal income tax and wealth tax) and to the local government (residence tax and real estate tax paid on a personal residence). These direct taxes are capped at 60 percent of the taxpayer's income.

Corporations

France has a territorial system of corporate income taxation. Corporations, wherever resident, are subject to tax only on income derived from French sources. Certain partnerships may elect entity-level taxation as corporations in lieu of current attribution of their income to partners. Business income is subject to tax at the standard rate of 33.33 percent and long-term capital gains are subject to tax at a rate of 15 percent. A parent company and its at least 95-percent owned subsidiaries may elect taxation as a single corporate entity. Certain special-purpose “headquarters companies” and “logistics center companies” are subject to a simplified tax regime wherein corporate tax at the normal rates is imposed upon an income corresponding to at least six to 10 percent of their annual operating expenses, with exemptions for certain employee allowances. At the election of the companies involved, corporate reorganizations may be accomplished without current tax effect.

B. International Aspects of Taxation in France

Individuals

As mentioned above, individuals resident in France are taxed on their worldwide income. Nonresidents are taxed only on income derived from sources within France. An individual is deemed to be resident in France for tax purposes if the individual: (1) maintains a principal residence in France; (2) the individual practices a profession in France, unless the individual can demonstrate that his or her activities in France are merely incidental; or (3) if the individual's "center of economic interest," generally the individual's principal place of business, is in France. Income from French sources includes income arising from real property, personal property (including stock of a corporation), or a business located within France; income from artistic, athletic, professional or business activities performed within France; gains from the sale of property as a dealer within France; capital gains on the transfer of real property located within France (and shares in privately held real property principally holding such real property); capital gains on the transfer of shares in a French corporation; and, when paid by a resident individual or corporation, pensions, annuities, royalties, and fees received for services provided or used within France.

Nonresident individuals are generally subject to withholding taxes at the following rates, in lieu of the progressive income tax to which residents are subject: 25 percent on dividends, 16 percent on interest; 33.33 percent on royalties from patents and know-how. Wages, salaries, pensions, and annuities received by nonresidents are subject to income tax at progressive rates.

Nonresidents maintaining homes in France are alternately subject to a tax, if higher than the tax on their French-source income described in the paragraph above, upon a notional income of three times the rental value of any homes available for their use in France—an exemption from this assessment applies upon showing French residence for four years preceding the year in which the tax would be imposed as well as a professional necessity for expatriation. Residents of tax treaty partner countries (without regard to the existence of relevant treaty provisions on the matter), French citizens subject to residence-country income tax at no less than two-thirds the French rate, and citizens of foreign countries having reciprocal agreements with France and subject to residence-country tax at two-thirds the effective French rate, are permanently exempt from this tax. Foreign diplomats and consular officers are wholly exempt from French income tax upon their official compensation and foreign-source income.

Corporations

France generally imposes tax only on corporate income derived from sources within France, without regard to corporate residence. Accordingly, losses incurred outside France are not allowed as deductions from taxable income. These rules are subject to an important exception, described below.

Income earned by a French enterprise through a foreign enterprise in which it owns at least a 10-percent or approximately \$28 million⁷ interest will be subject to current French corporate tax if the foreign enterprise is subject to a favorable residence-country income tax regime at an effective rate of less than two-thirds the generally applicable French rate unless the French enterprise can demonstrate that the foreign enterprise engages in commercial or industrial activity and operates primarily within its local market.⁸

Nonresident corporations are subject to withholding tax at the same rates and upon the same items of passive, nonbusiness, and real property income as nonresident individuals. Furthermore, repatriation of profits from a French branch of a foreign corporation is generally subject to a 25-percent withholding tax.

Relief from double taxation

In the absence of a treaty, France generally provides double tax relief to resident individuals by way of a deduction from taxable income. Since corporations are not generally subject to French tax on income from sources outside France, they are not provided double tax relief.

⁷ U.S. dollar equivalents were calculated using an exchange rate of 0.82 euro to one U.S. dollar.

⁸ A new provision, however, is applicable as of January 1, 2006. The percentage of required holding has been increased from 10 percent to more than 50 percent. This threshold is reduced to only 5 percent when more than 50 percent of the foreign enterprise is controlled by French enterprises and foreign entities that are controlled by French enterprises. The definition of foreign enterprises subject to a favorable regime also was modified. It encompasses enterprises subject to a tax rate lower than 50 percent of the French tax that generally would be due on a similar income. EU enterprises are not subject to this provision unless the French tax administration can demonstrate that they are part of “an artificial arrangement aimed at circumventing the French tax legislation.”

C. Other Taxes

Inheritance, gift, and wealth taxes

Inheritance tax is levied at the time of death on the worldwide assets of a French resident or upon the assets of a nonresident situated within France. Tax rates vary from zero to 60 percent, and depend upon the identity of the recipient and the value of the property acquired. Gift tax is generally levied upon the transfer by gift of property exceeding a threshold amount. Wealth tax is imposed annually upon individuals resident or owning property in France at progressive rates from 0.55 to 1.80 percent of the worldwide net worth of resident individuals or the French-situated net worth of nonresident individuals in excess of approximately \$900,000.⁹ Financial assets of nonresident individuals are exempt from wealth tax.

Social security and payroll taxes

France imposes several taxes for the purpose of financing its social security scheme. The widespread social security contribution (“CSG”) is withheld from employment income and payable upon self-employment income at a rate of 7.5 percent. CSG is payable upon property income, including capital gains, at a rate of 8.2 percent. The contribution for the reimbursement of the social debt (“CRDS”) is generally payable upon all income, subject to certain allowances, at a rate of 0.5 percent. The social levy is payable upon certain property income at a rate of 2.2 percent. Certain types of social security taxes are deductible for income tax purposes. Payroll taxes are imposed at progressive rates of 4.25 to 13.60 percent, determined by reference to individual employees’ remunerations, upon wages paid in France by enterprises not liable for VAT on at least 90 percent of their prior year turnover. Certain small businesses are exempt from payroll tax.

Indirect taxes

France imposes a value-added tax upon all increases in value throughout the French production and distribution chains of property, including real property, and services. The generally applicable rate is 19.60 percent, but reduced rates are imposed upon certain goods and services, and enterprises with turnover below a de minimis threshold are exempt from VAT. Goods and services for export outside the EU are wholly exempt from value-added tax. Excise duties are levied upon certain consumer goods such as alcohol, tobacco, and petroleum products as well as upon certain sports and gambling activities. Registration duties are imposed upon certain transfers of real property or corporate stock, and upon contributions of capital to corporations. Environmental taxes are imposed upon certain polluting activities. Local taxes are typically imposed upon the ownership of real property and business personal property.

⁹ See note 7 above.

IV. EXPLANATION OF PROPOSED PROTOCOL

Article I. Resident

In general

The proposed protocol would amend Article 4 (Resident) of the existing treaty in a manner intended to clarify in particular circumstances the definition of “resident” under the treaty. The amendments to Article 4 address the tax treatment of cross-border investments through partnerships and other similar entities.

U.S. internal law

Entities treated as partnerships under U.S. tax law are fiscally transparent. That is, they generally are not taxed separately from their owners. Instead, the owners of the partnership are subject to U.S. tax based on their allocable shares of the income and losses of the partnership. Entities that may be treated as partnerships for U.S. tax purposes include state law general partnerships, limited partnerships, and limited liability companies.

The classification of business entities for U.S. tax purposes as corporations, as partnerships, or as disregarded as entities separate from their owners generally is determined under Treasury regulations. Certain domestic and foreign entities are automatically classified as corporations for U.S. tax purposes.¹⁰ An entity, foreign or domestic, not automatically classified as a corporation (an “eligible entity”) may elect its classification.¹¹ An eligible entity with two or more owners may elect to be classified either as a corporation (and thereby to be subject to U.S. corporate tax) or as a partnership (and thereby to be treated as fiscally transparent), and an entity with a single owner may elect to be classified as a corporation or to be disregarded as an entity separate from its owner.

The interaction of the entity classification rules described above with the tax laws of another country may cause an entity to be classified differently for U.S. and foreign tax purposes. For example, a limited liability company organized under the laws of a U.S. State may be treated as fiscally transparent for U.S. purposes and as a separate taxpayer for foreign tax purposes. Such an entity generally is referred to as a “hybrid entity.”

¹⁰ Treas. Reg. sec. 301.7701-2(b).

¹¹ Treas. Reg. sec. 301.7701-3. These elective rules for entity classification are commonly referred to as the check-the-box rules.

French internal law

An association treated as a partnership under French income tax rules is not fiscally transparent. Instead, the association is treated as “translucent.” A translucent entity is recognized as a separate legal entity for tax purposes even if it is not subject to tax.¹²

Under its bilateral income tax treaties, France generally treats partnerships organized under French law as French residents and therefore does not look to the residence of the partners of the partnership in applying the treaties.

The differing treatment of partnerships under U.S. and French tax laws has caused ambiguities under the current treaty.

Proposed protocol modifications to current treaty

Under the current treaty, a *fonds commun de placement* organized in France is treated automatically as a resident of France in determining eligibility for U.S. tax benefits under the treaty.¹³ Under the proposed protocol, a *fonds commun de placement* instead would be treated as a partnership. For purposes of U.S. tax benefits under the treaty, it therefore would be subject to the Article 4 residence rules applicable to partnerships (described in the next paragraph).

A fiscally transparent entity such as a partnership is treated under the existing treaty as a resident of a treaty country only to the extent the income derived by the entity is “subject to tax” in that country as the income of a resident. The proposed protocol would modify this rule in two ways.¹⁴ First, it would provide that a fiscally transparent entity, whether organized or managed in the United States, France, or a third country, is treated as a resident of a treaty country only to the extent that the income it derives “is treated for taxation purposes in that [country] as the income of a resident,” either in the hands of the entity or in the hands of the partners (or the beneficiaries or grantors in the case of an estate or trust). Second, it would provide that a fiscally transparent entity organized in a third country is entitled to treaty benefits with respect to French-source income or gains only if (1) there is no contrary provision in a tax treaty entered into with that third country by either France or the United States; (2) the entity is not subject to tax under the laws of the third country on its French-source income either in its own hands or in the hands of its partners, beneficiaries, or grantors; (3) the French-source income is taxed in the same manner (except to the extent resulting from differences in accounting methods or accounting periods or from other similar differences) as it would be if the income had been derived directly by the owners of the entity; and (4) it is possible under a tax treaty between the third country and

¹² Certain partnerships may elect entity-level taxation as corporations in lieu of current attribution of income to partners.

¹³ A *fonds commun de placement* is an investment fund analogous to a U.S. mutual fund.

¹⁴ These modifications are found in proposed subparagraph (b)(iv) of paragraph 2 of Article 4 of the treaty.

the treaty country in which the income arises to exchange information about the fiscally transparent entity.

The Technical Explanation describes several fact patterns to illustrate the operation of the rules set forth in proposed paragraph 2(b)(iv) of Article 4 of the treaty. In one scenario, a French company pays interest to an entity that is treated as fiscally transparent for U.S. tax purposes. The Technical Explanation states that the interest income will be considered derived by a U.S. resident only to the extent that the U.S. tax laws treat one or more U.S. residents as deriving the income for U.S. tax purposes. If the fiscally transparent entity is a partnership for U.S. tax purposes, the partners of the partnership generally are the persons treated under U.S. tax law as deriving the income through the partnership. These partners could claim treaty benefits under the protocol rule, therefore, only if they were U.S. residents. In a second scenario, a French company pays interest to an entity that is organized under U.S. law and that is classified as a corporation for U.S. tax purposes. The interest income in this case would be treated as derived by a U.S. resident because under U.S. tax law the corporation is considered a U.S. resident and is treated as deriving the income. The Technical Explanation states that the results in these two scenarios would be the same even if the French tax law treatment of the entity differs from the U.S. tax law treatment -- for example, in the first scenario, by treating the entity as not fiscally transparent.

The Technical Explanation notes that the proposed rules for fiscally transparent entities described above would not be an exception to the saving clause of paragraph 2 of Article 29 (Miscellaneous Provisions) of the existing treaty. If a U.S. limited liability company with French members elects to be classified as a corporation for U.S. tax purposes, the proposed rules would not, for example, prevent the United States from subjecting the worldwide income of the limited liability company to U.S. tax on a net basis.

The proposed protocol sets forth a new rule (in proposed paragraph 2(b)(v) of Article 4 of the treaty) under which a fiscally transparent entity that is organized in the United States and which derives both U.S.- and French-source income may be treated as a resident of both the United States and France. The entity would be treated as a resident of the United States to the extent its income is treated under U.S. law as derived by a U.S. resident. The entity would be treated as a resident of France to the extent of its French-source income allocable to French resident partners, beneficiaries, or grantors. Under this provision, a French partner of a U.S. partnership that receives French-source income would not be subject to French withholding tax (but under French law would be subject to French income tax) on the partner's allocable share of that income.

The proposed protocol also clarifies (in proposed paragraph 2(b)(vi) of Article 4 of the treaty) that a pension trust, other organization, or not-for-profit organization established in a treaty country is eligible for treaty benefits with respect to its allocable share of income derived by a fiscally transparent entity even though all or part of the organization's income may be exempt from income taxation by the country in which it is established. As a result of the "subject to tax" requirement of the existing treaty (described above), it is not clear that a tax-exempt organization is eligible for treaty benefits for income derived through a fiscally transparent entity.

Article II. Dividends

In general

The proposed protocol would amend Article 10 (Dividends) of the existing treaty by expanding the class of shareholders eligible for the treaty's 15-percent rate of U.S. withholding tax on dividends from real estate investment trusts ("REITs"). The provisions of the proposed protocol in this regard are similar to those included in other recent U.S. income tax treaties and protocols.

U.S. internal law

A REIT is a corporation, trust, or association that is subject to the regular corporate income tax, but that receives a deduction for dividends paid to its shareholders if certain conditions are met. In order to qualify for the deduction for dividends paid, a REIT must distribute most of its income. Thus, a REIT is treated, in essence, as a conduit for Federal income tax purposes. Because a REIT is taxable as a U.S. corporation, a distribution of its earnings is treated as a dividend rather than income of the same type as the underlying earnings. Such distributions are subject to the U.S. 30-percent withholding tax when paid to foreign owners.

A REIT is organized to allow investors to diversify ownership in primarily passive real estate investments. As such, the principal income of a REIT often is rental income from real estate holdings. Like dividends, U.S.-source rental income of foreign persons generally is subject to the 30-percent withholding tax (unless the recipient makes an election to have such rental income taxed in the United States on a net basis at the regular graduated rates). Unlike the withholding tax on dividends, however, the withholding tax on rental income generally is not reduced in U.S. income tax treaties. Thus, a foreign person directly holding U.S. real property generally is required to pay U.S. tax either at a 30-percent rate on gross income or at normal graduated rates on net income, regardless of whether such person is a resident of a country with which the United States has an income tax treaty.

If the United States were to agree in its income tax treaties to reduce withholding taxes on dividends from REITs without limitation, then a foreign treaty-country resident simply could place U.S. real property into a REIT and thereby transform real estate income into dividend income, taxable at a much lower rate. For this reason, U.S. income tax treaties generally include limitations on REIT dividend benefits, in order to ensure that the reduced rates of withholding tax under U.S. income tax treaties are available only to diversified, portfolio-type investors, as opposed to direct-type investors in U.S. real property.

Proposed protocol restrictions on U.S. internal law

Under the current treaty, dividends paid by a REIT are eligible for the reduced 15-percent rate of U.S. withholding tax only in cases in which the beneficial owner of the dividends is an individual holding an interest of less than 10 percent in the REIT.

Under the proposed protocol, dividends paid by a REIT would be eligible for the reduced 15-percent rate of U.S. withholding tax in cases in which any one of the following three

conditions is met: (1) the beneficial owner of the dividends is an individual holding an interest of 10 percent or less in the REIT; (2) the dividends are paid with respect to a class of stock that is publicly traded, and the beneficial owner of the dividends is a person (not necessarily an individual) holding an interest of not more than five percent of any class of stock of the REIT; or (3) the beneficial owner of the dividends is a person (not necessarily an individual) holding an interest in the REIT of not more than 10 percent, and the value of no single interest in real property held by the REIT exceeds 10 percent of the value of the REIT's total interests in real property.

Article III. Pensions

The proposed protocol replaces Article 18 (Pensions) of the current treaty, and provides rules for the taxation of pensions and social security benefits. Proposed paragraph 1 of Article 18 provides that payments under social security or similar legislation and pension distributions or other similar remuneration paid by a social security or pension arrangement established in one of the treaty countries to a resident of the other treaty country are taxable only in the first (source) country, regardless of whether such payments are paid periodically or in a lump sum. Paragraph 1 is excepted from the saving clause of paragraph 2 of Article 29 (Miscellaneous Provisions) by paragraph 3(a) of Article 29 as revised by the proposed protocol.

The proposed protocol does not change the source rule of the current treaty applicable to social security payments. Thus, under both the current treaty and the proposed protocol, a U.S. citizen who resides in the United States (or France) and receives social security payments from France is subject to tax on that distribution only in France.

However, the proposed protocol does change the residence rule of the current treaty applicable to pensions (other than social security). Under the current treaty, such pension distributions are taxable only in the recipient's country of residence, subject to the saving clause. Thus, under the current treaty, a U.S. citizen who resides in the United States and receives distributions from a French pension plan is subject to tax on that distribution only in the United States. If such a recipient is, instead, a resident of France, both France and the United States are entitled to tax such payment under the current treaty, subject to appropriate foreign tax credit relief under Article 24 of the treaty. Under the proposed protocol, a U.S. citizen who resides in the United States (or France) and receives distributions from a French pension plan is subject to tax on that distribution only in France. A French resident who receives pension distributions from a U.S. payor is subject to tax only in the United States.

Under proposed paragraph 2 of Article 18, if an individual performing personal services is a resident of a treaty country but not a national of such country, and is a participant in a pension or other retirement arrangement ("plan") that is established, maintained, and recognized for tax purposes in the other treaty country, contributions made by or on behalf of the individual to the plan are deductible in computing his or her taxable income in the residence country. Similarly, in the case of employment, any benefits accrued under the plan or contributions made to the plan by or on behalf of the individual's employer are excluded from the employee's taxable income in his or her residence country and are allowed as a deduction in computing the employer's profits in the employee's residence country. For example, if a participant in a U.S. qualified plan goes to work in France and becomes a resident there, contributions made by the

participant and his or her employer during that period are not included in the participant's income in France, and the employer may deduct its contributions from its business profits in France.

The rules of paragraph 2 apply only if the following two conditions are met: (1) contributions were made by or on behalf of the individual to the plan (or to a similar plan for which the plan was substituted) before the individual arrived in the residence (host) country; and (2) the competent authority of the first country agrees that the plan "generally corresponds" to a plan established, maintained, and recognized for tax purposes in that country. Moreover, the relief provided under these rules by the first country will not exceed the relief that would be allowed by that country for contributions to, or benefits accrued under, a plan established, maintained, and recognized for tax purposes in that country. According to the Technical Explanation, for purposes of determining the amount and timing of deductions for French tax purposes of amounts contributed to a U.S. plan, the relevant comparison is to the French mandatory plans and not to non-mandatory plans, provided that the French competent authority agrees that the U.S. plan in question generally corresponds to the French mandatory plan (even though the U.S. plan may not be mandatory).

The proposed protocol enumerates certain plans that are considered to generally correspond to a recognized plan in the host country. French plans organized under the French social security legislation are considered to generally correspond to a plan established, maintained, and recognized for tax purposes in the United States. The following plans are considered to generally correspond to a plan established, maintained, and recognized for tax purposes in France: social security or similar legislation of the United States; qualified plans under section 401(a); individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and, according to the Technical Explanation, Roth IRAs under section 408A); section 403(a) qualified annuity plans; and section 403(b) plans. In addition to the specified plans, the competent authorities may agree that other plans in one country generally correspond to recognized plans in the other country. Under the proposed protocol, a plan is recognized for tax purposes in a country if the contributions to the plan would qualify for tax relief under the domestic law of that country.

Proposed paragraph 2 of Article 18 is an exception to the saving clause of paragraph 2 of Article 29 (Miscellaneous Provisions) by virtue of paragraph 3(b) of Article 29 as revised by the proposed protocol, but only in the case of individuals who are neither citizens of, nor have immigrant status (i.e., a "green card") in, the United States.

Proposed paragraph 2 of Article 18 is similar to a provision in the recently ratified protocol to the U.S.-Netherlands tax treaty.¹⁵ Under the U.S.-Netherlands treaty as amended by the protocol, an individual covered by a Netherlands pension plan who exercises employment in the United States is generally not taxed in the United States on the associated contributions to the

¹⁵ See Joint Committee on Taxation, *Explanation of Proposed Protocol to the Income Tax Treaty Between the United States and the Netherlands* (JCX-54-04), September 16, 2004.

plan and the accrued benefits of the plan, even if the individual is a citizen of the United States. Unlike the Netherlands treaty, however, the proposed French protocol provides that an individual who is a U.S. citizen or holds a green card, and who exercises employment in the United States, is subject to U.S. tax (to the extent taxable under the U.S. tax rules) on the contributions made and the benefits accrued to such individual's French pension plan.

Finally, the proposed protocol applies the rules of Article 18 to government pensions paid with respect of services rendered to a country, or to a political subdivision or local authority thereof.

Article IV. Public Remuneration

The proposed protocol makes changes to Article 19 (Public Remuneration) of the current treaty in coordination with the changes made to Article 18 (Pensions). Under the proposed protocol, the taxation of pensions paid by a treaty country (or political subdivision or local authority) for services rendered to such country (or political subdivision or local authority) is governed by the provisions of Article 18, regardless of whether the services are rendered in connection with a governmental function or a business carried on by such country.

Article V. Relief From Double Taxation

The proposed protocol would make technical conforming changes to Article 24 (Relief From Double Taxation) of the existing treaty, to reflect the changes that would be made by the proposed protocol to Article 18 (Pensions) and Article 19 (Public Remuneration) of the treaty, as described above.

Article VI. Miscellaneous Provisions

Like all U.S. income tax treaties and the U.S. model, the existing treaty includes a "saving clause," which is set forth in Article 29 (Miscellaneous Provisions). Under this clause, with specific exceptions, the treaty does not affect the taxation by the United States of its citizens. Thus, the United States generally may continue to tax its citizens who are residents of France as if the treaty were not in force.

Like other U.S. income tax treaties, the current treaty contains a provision under which the saving clause (and therefore U.S. taxing jurisdiction to the full extent of U.S. internal law in most respects) applies to a former U.S. citizen whose loss of citizenship status had as one of its principal purposes the avoidance of U.S. income tax. This provision was included to allow the United States to apply its special expatriation tax regime, set forth in section 877 of the Code.¹⁶

First enacted in 1966, this regime was designed to reduce opportunities for U.S. citizens to renounce their citizenship for the purpose of avoiding U.S. taxes. The regime has the main effect of expanding the scope of income that is subject to taxation by the United States, such that

¹⁶ The Code also includes special expatriation-related rules for purposes of the estate and gift taxes. *See* Code secs. 2107 and 2501(a)(3).

a former citizen or long-term resident to whom the rules apply is subject to U.S. tax on a somewhat broader basis than other nonresident aliens, but still on a narrower basis than a current U.S. citizen or resident. This special tax treatment applies for a period of 10 years, and thus the provision of the current treaty applies only for the 10-year period following the loss of U.S. citizenship.

Under the regime prior to its amendment in 1996, only former *citizens* were subject to these special tax rules, if they relinquished U.S. citizenship with a principal purpose of avoiding U.S. taxes. The Congress made several changes to the rules in 1996, including extending the special rules to certain former long-term residents of the United States who terminated U.S. residency with a principal purpose of avoiding U.S. taxes.

The proposed protocol would expand the application of the expatriation provision of the saving clause beyond former citizens, to include former long-term residents whose termination of residency had as one of its principal purposes the avoidance of U.S. tax.¹⁷ This provision would update the treaty to reflect the amendments made to U.S. law in 1996.

Substantial changes to the special expatriation rules were included in the American Jobs Creation Act of 2004 (“AJCA”), which was signed into law on October 22, 2004 (several weeks before the proposed protocol was signed, on December 8, 2004). The proposed protocol does not reflect these recent changes.

AJCA eliminated prior law’s subjective determinations of tax-avoidance purpose and replaced them with objective rules for determining the applicability of the special tax regime for expatriates. Under the regime as amended by AJCA, a former citizen or former long-term resident is subject to the special income, estate, and gift tax rules for expatriates unless the individual: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed \$124,000 (adjusted for inflation after 2004) and his or her net worth is less than \$2 million, or alternatively satisfies limited, objective exceptions for dual citizens and minors who have had no substantial contact with the United States; and (2) certifies under penalties of perjury that he or she has complied with all Federal tax obligations for the preceding five years and provides such evidence of compliance as the Treasury Secretary may require. Thus, as a result of AJCA, the application of the expatriation tax regime no longer turns on determinations of whether a person had a principal purpose of tax avoidance, as it often did prior to AJCA.

The Technical Explanation notes that while AJCA eliminated the ruling process and the “tax avoidance purpose” language in section 877, it retained the objective net worth and net income tax tests. According to the Treasury Department, the objective tests in section 877 represent the administrative means by which the United States determines whether a taxpayer

¹⁷ Under the proposed protocol, the “tax” being avoided need not be the income tax (as it is under the existing treaty), but could, for example, be the estate or gift tax. This would also be the case with respect to a former citizen. As explained below, the concept of tax-avoidance purpose is now irrelevant under Code sec. 877, but the proposed protocol’s change in wording in this regard would bring the treaty closer to the meaning of that concept as it has traditionally been used for purposes of these rules.

has a tax avoidance purpose for purposes of reserving the taxing rights contained in the saving clause. The Technical Explanation maintains that section 877, as amended by AJCA, is consistent with paragraph 2 of Article 29 and paragraph 2 allows the United States to exercise its full taxing jurisdiction with respect to former citizens and long-term residents.

Exceptions to saving clause

Exceptions to the saving clause are provided for certain benefits conferred by Article 18 (Pensions) of the present treaty, as amended by the proposed protocol.

Article VII. Entry Into Force

The proposed protocol would enter into force upon the exchange of instruments of ratification by the two countries.

The proposed protocol would have effect with respect to taxes withheld at source for amounts paid or credited on or after the first day of the second month next following the date on which the proposed protocol enters into force. For other taxes, the proposed protocol would have effect for taxable years beginning on or after January first of the year following the date of entry into force.

A special effective date would apply with respect to the provisions of Article I (Resident) of the proposed protocol dealing with fiscally transparent entities, making these provisions generally retroactive to the effective date of the existing treaty. Under this special rule, these provisions, except to the extent that they treat a *fonds commun de placement* as a partnership for purposes of U.S. tax benefits under the treaty, would have effect with respect to taxes withheld at source for amounts paid or credited on or after February 1, 1996. For other taxes, these provisions would have effect for taxable years beginning on or after January 1, 1996.

V. ISSUES

A. Expatriation to Avoid Tax by Former U.S. Citizens and Long-Term Residents

There is a potential conflict between the special expatriation tax regime of U.S. internal law and the proposed protocol. The saving clause that the proposed protocol would add to the treaty uses the obsolete “principal purposes of tax avoidance” formulation in determining whether the special tax regime may apply to individuals who expatriate, even though the subjective determinations of tax-avoidance purpose under prior law were recently eliminated and replaced with objective rules for determining the applicability of the special tax regime.

The saving clause of the present treaty applies to former U.S. citizens whose loss of citizenship status had as one of its principal purposes the avoidance of U.S. income tax. The provision is limited to the 10-year period following the loss of U.S. citizenship.

Like the U.S. model and recently negotiated U.S. income tax treaties, the proposed protocol expands the saving clause provision (and therefore U.S. tax jurisdiction) under the present treaty to include former long-term U.S. residents whose termination of residency had as one of its principal purposes the avoidance of U.S. income tax. Thus, the proposed protocol largely reflects the changes to the U.S. tax rules for former citizens and long-term residents as of 1996.¹⁸

Before section 877 was amended by AJCA, individuals who met a specified income tax liability threshold or a specified net worth threshold generally were considered to have lost citizenship or resident status for a principal purpose of U.S. tax avoidance, but the law allowed for subjective determinations of tax-avoidance purpose. Certain categories of individuals, including a very limited class of dual residents or citizens, could avoid being deemed to have a tax avoidance purpose for relinquishing citizenship or terminating residency by submitting a ruling request to the IRS for a determination as to whether the relinquishment of citizenship or termination of residency had as one of its principal purposes the avoidance of U.S. income, estate or gift taxes.

Under the regime prior to its amendment by AJCA, if a former U.S. citizen or long-term resident relinquished U.S. citizenship or terminated U.S. residency with a principal purpose of avoiding U.S. taxes, the individual was subject to a special set of income, estate, and gift tax rules for the 10-year period following such loss of status. Under present and prior law, these rules mainly have the effect of expanding the scope of income and wealth transfers that are subject to taxation by the United States, such that the individual is subject to U.S. tax on a

¹⁸ Prior to 1996, section 877 of the Code provided special rules for the imposition of U.S. income tax on former U.S. citizens for a period of 10 years following the loss of citizenship; these special tax rules applied to a former citizen only if his or her loss of U.S. citizenship had as one of its principal purposes the avoidance of U.S. income, estate or gift taxes. The Health Insurance Portability and Accountability Act of 1996 (“HIPA”) made several changes to these special rules, including making these rules, as amended, applicable to certain former long-term residents of the United States.

somewhat broader basis than other nonresident aliens, but still on a narrower basis than a current U.S. citizen or resident. Under prior law, for purposes of determining the applicability of the regime, an individual who relinquished citizenship or terminated residency was treated as having done so with a principal purpose of tax avoidance if the individual's average Federal income tax liability or net worth exceeded certain monetary thresholds, but certain categories of individuals (e.g., dual residents) could avoid this presumption by requesting a ruling from the IRS that they did not have such a principal purpose, based on the relevant facts and circumstances.

AJCA eliminated these subjective determinations of tax-avoidance purpose and replaced them with objective rules. Under the regime as amended by AJCA, a former citizen or former long-term resident is subject to the special income, estate, and gift tax rules for expatriates unless the individual: (1) establishes that his or her average annual net income tax liability for the five preceding years does not exceed \$124,000 (adjusted for inflation after 2004) and his or her net worth is less than \$2 million, or alternatively satisfies limited, objective exceptions for dual citizens and minors who have had no substantial contact with the United States; and (2) certifies under penalties of perjury that he or she has complied with all Federal tax obligations for the preceding five years and provides such evidence of compliance as the Treasury Secretary may require. Thus, as a result of AJCA, the application of the expatriation tax regime no longer turns on determinations of whether a person had a principal purpose of tax avoidance, as it often did prior to AJCA.

The Technical Explanation notes that under the proposed protocol, the determination of whether there was a principal purpose of tax avoidance with respect to former citizens or long-term residents of the United States is made under the laws of the United States. The Technical Explanation further states that the new objective tests "represent the administrative means by which the United States determines whether a taxpayer has a tax avoidance purpose." Thus, although the proposed protocol employs the now-obsolete concept of a tax-avoidance purpose, the Technical Explanation maintains that this language should be understood as fully preserving U.S. taxing jurisdiction under the expatriation tax rules in their current form.

The Committee may wish to satisfy itself that the language included in the proposed protocol allows the United States to exercise its full taxing jurisdiction with respect to former citizens and long-term residents. The Committee also may wish to inquire as to why the language of the proposed protocol was not updated to eliminate potential conflicts with section 877, as revised by AJCA.

B. U.S. Model Income Tax Treaty

It has been longstanding practice for the Treasury Department to maintain, and update as necessary, a model income tax treaty that reflects the current policies of the United States pertaining to income tax treaties. Some of the purposes of this model are explained by the Treasury Department in its Technical Explanation of the U.S. model:

[T]he Model is not intended to represent an ideal United States income tax treaty. Rather, a principal function of the Model is to facilitate negotiations by helping the negotiators identify differences between income tax policies in the two countries. In this regard, the Model can be especially valuable with respect to the many countries that are conversant with the OECD Model. ... Another purpose of the Model and the Technical Explanation is to provide a basic explanation of U.S. treaty policy for all interested parties, regardless of whether they are prospective treaty partners.¹⁹

U.S. model tax treaties provide a framework for U.S. treaty policy. These models provide helpful information to taxpayers, the Congress, and foreign governments as to U.S. policies on often complicated treaty matters. In order to promote clarity, transparency, and meaningful Congressional oversight in this area, the U.S. model tax treaties should reflect the most current positions on U.S. treaty policy. Periodically updating the U.S. model tax treaties to reflect changes, revisions, developments, and the viewpoints of Congress with regard to U.S. treaty policy would ensure that the model treaties remain meaningful and relevant.²⁰

With assistance from the staff of the Joint Committee on Taxation, the Committee on Foreign Relations reviews tax treaties negotiated and signed by the Treasury Department before ratification by the full Senate is considered. The U.S. model is an important part of this review process, because it helps the Senate determine the Administration's most recent treaty policy and understand the reasons for diverging from the U.S. model in a particular tax treaty. To the extent that a particular tax treaty adheres to the U.S. model, transparency of the policies encompassed in the tax treaty is increased and the risk of technical flaws and unintended consequences resulting from the tax treaty is reduced.

It is recognized that tax treaties often diverge from the U.S. model due to, among other things, the unique characteristics of the legal and tax systems of treaty partners, the outcome of negotiations with treaty partners, and recent developments in U.S. treaty policy. However, even without taking into account the central features of tax treaties that predictably diverge from the U.S. model (e.g., withholding rates, limitation on benefits, exchange of information), the technical provisions of recent U.S. tax treaties have diverged substantively from the U.S. model

¹⁹ Treasury Department, Technical Explanation of the United States Model Income Tax Convention, at 3 (September 20, 1996).

²⁰ The staff of the Joint Committee on Taxation has recommended that the Treasury Department update and publish U.S. model tax treaties once per Congress. Joint Committee on Taxation, *Study of the Overall State of the Federal Tax System and Recommendations for Simplification, Pursuant to Section 8022(3)(B) of the Internal Revenue Code of 1986* (JCS-3-01), April 2001, vol. II, pp. 445-447.

with increasing frequency. This development suggests that the U.S. model, which has not been updated since 1996, is becoming obsolete.

In testimony before the Committee in February 2004, the Treasury Department stated that it intended to update the U.S. model, and to work with the staffs of this Committee and the Joint Committee on Taxation in this regard.²¹ In testimony before the Committee in September 2004, the Treasury Department stated that it had begun work on an update to the U.S. model, and was looking forward to working with the staffs of this Committee and the Joint Committee on Taxation on this project.²² The Committee may wish to inquire of the Treasury Department as to the current status of this project.

²¹ Testimony of Barbara M. Angus, International Tax Counsel, U.S. Treasury Department, Before the Senate Committee on Foreign Relations Hearing on Pending Income Tax Agreements, February 25, 2004.

²² Testimony of Barbara M. Angus, International Tax Counsel, U.S. Treasury Department, Before the Senate Committee on Foreign Relations Hearing on Pending Income Tax Agreements, September 24, 2004.