

# Barbados Develops as a Low Tax Jurisdiction

## I. Introduction

Recently the government of Barbados under the leadership of J.M.G.M. Adams, Prime Minister and Minister of Finance and Planning, has attempted to fortify its economy by establishing increased service industries in Barbados. A chief means by which Barbados has acted to increase its service industries has been to strengthen the country's ability to act as a service center for persons engaging in international transactions. This paper discusses the mechanisms Barbados uses as it seeks to accomplish this objective. This discussion is divided into five sections, as follows: a brief political and economic background; the International Business Companies Act in Barbados; the recently enacted Offshore Banking Act; tax treaties between Barbados and non-CARICOM countries; tax treaties between Barbados and CARICOM countries.

## II. Background

### A. *Political and Economic*

There are a number of factors which bear on the utility of Barbados as a low tax jurisdiction.<sup>1</sup> The principal advantage to Barbados is its economic and political stability which are practically unequaled in the Third World, and particularly in the West Indies. Since gaining independence from the United Kingdom in 1966, government has functioned smoothly with power alternating between the two major political parties. However, Barbados has not been previously recognized as a major low tax jurisdiction and does not have certain sophisticated mechanisms to attract investors, such as secrecy

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\*Mr. Zagaris practices law in Washington, D.C..

<sup>1</sup>For a complete discussion of necessary attributes of a low tax jurisdiction, see the introduction to W. DIAMOND, *TAX HAVENS OF THE WORLD* (1979) and M. LANGER, *PRACTICAL INTERNATIONAL TAX PLANNING* (1980).

laws and long-term guarantees of a particular low tax rate, and guarantees against expropriation.

Barbados is located in the southern end of the Lesser Antilles Islands. It is a small country, only 21 miles long and 14 miles wide, with an area of 166 square miles. The island has an adult literacy rate of 97 percent and has an excellent educational system, including a campus of the University of the West Indies. Legal, accounting and banking services are readily available. Communications and transportation facilities are excellent.

The Barbados economy, although suffering from the world recession in the mid-1970s when its unemployment averaged 22 percent and inflation rose to 40 percent, has demonstrated remarkable vitality in recent years. During the four years from 1975 to 1979, its GNP has shown real growth; unemployment has been reduced to a current level of about 12 percent, and there was single digit inflation in 1976, 1977 and 1978. However, the 1979 oil price increases raised inflation in Barbados to 13.2 percent.

The economic growth of Barbados has been primarily a result of its flourishing tourist industry. However, tourism is not expected in the 1980s to provide the required number of new jobs. Since the sugar industry, formerly the main economic sector and export earner, has declined significantly, the economic future of Barbados will depend on the development of light manufacturing industries and its emerging role as a service center for international investments.

### *B. Banking and Foreign Exchange*

Under the Exchange Control Act, 1967-53, the Exchange Control Authority in the Ministry of Finance regulates flows of foreign exchange. Much of the authority over exchange control has been delegated to the Central Bank of Barbados. Commercial banks as authorized foreign exchange dealers assist the Central Bank by handling most of the transactions made in foreign currencies or gold bullion. These banks are primarily local branches of North American banks.

The unit of the monetary system is the Barbados dollar,<sup>2</sup> which replaced the Eastern Caribbean dollar in 1973. Since February 29, 1974, transactions with residents of other countries, or with nonresidents, have been subject to Exchange Control regulations. Nonresidents having accounts in Barbados dollars with authorized dealers normally need Exchange Control approval in order to convert such accounts into foreign currency.

### *C. Transfer of Funds and Guarantees*

Invested capital and capital gains on the sale of an investment may be repatriated. The Exchange Control does have the power to ask that remit-

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<sup>2</sup>The exchange rate is fixed at 1.98 Barbados dollars to one United States dollar. The symbol (Bds.) \$ refers to Barbados dollars. The dollar symbol used alone refers to the U.S. dollar.

tances of capital gains be transferred over a reasonable period of time. Interest earned on any portion remaining may be freely remitted.

Nonresidents can bring foreign exchange into Barbados for the purpose of deposit with a financial institution or in order to engage in lawful business. However, registration of foreign funds should be made with the Exchange Control on an application Form FI, which is filed through an authorized dealer.

Applications for the repatriation of foreign funds are made on Form FC. Profits and dividends derived by owners or shareholders may also be freely remitted after evidence is submitted to the Commissioner of Inland Revenue that income tax has been paid.

The Government of Barbados guarantees the free convertibility of exchange. Barbados does not have bilateral treaties providing investment guarantees against nationalization or expropriation, war, revolution or unrest, or inconvertibility of exchange.

#### *D. The Formation of Companies*

The formation of companies in Barbados is regulated by the Companies Act of November 22, 1910, as amended, which is based on the British Companies Act. Five or more persons may incorporate a company by registering and subscribing their names to a memorandum of association. Two or more persons are required for a private company. Public companies must have a minimum number of shareholders, and private companies must have at least two shareholders. A commercial entity wanting to conduct business under a name other than that of the trader himself or the partners must register the name of the organization under the Business Names Act. In practice, it takes approximately thirty days normally to incorporate although it can sometimes be accelerated.

One may operate in Barbados through a locally incorporated company or a branch of a foreign company. Most foreign investors operate as local corporations and may organize as one of three forms: (1) a company limited by shares; (2) a company limited by guarantees; and (3) an unlimited company.

There is no minimum or maximum of capital required under the Companies Act. Registration fees for incorporation range from (Bds.) \$25 to (Bds.) \$10,000 and upwards depending on the amount of capital. Legal costs are said to average from about \$1,000 to \$2,500.

The best means to obtain anonymity for shareholders is to interpose a trust or nominee from a jurisdiction having secrecy provisions. Share warrants are also permitted. The names and addresses of beneficial owners of shares must be revealed to the Central Bank, but it will keep them confidential. However, it is not a criminal violation under law for government officials or other employees to reveal such information.

### III. The International Business Companies Act

#### A. Background

The International Business Companies (Exemption from Income Tax) Act (IBCA), 1965, as amended in 1977,<sup>3</sup> provides the legislative framework for offshore operations. Although similar legislation exists in Antigua, Grenada, Jamaica, and St. Vincent,<sup>4</sup> this legislation has been seldom used.

#### B. Preferential Tax Treatment

Under the IBCA, a qualifying international investment company is subject to tax on its profits and gains at the following preferential rates:

- 2½% up to (Bds.) \$10,000,000
- 2% between (Bds.) \$10,000,000 and \$20,000,000
- 1½% between (Bds.) \$20,000,000 and \$30,000,000
- 1% over (Bds.) \$30,000,000

Prior to the International Business Company (Exemption from Income Tax) (Amendment) Act, 1979 (1979-23), international business companies which were not investment companies were exempt from tax on profits and gains as well as dividends paid to nonresidents.

#### C. Statutory Definition of an IBC

To qualify for status as an international business company, an entity must be a corporation engaged in trade in which (1) not more than 10 percent of the assets on liquidation would be receivable by individuals who are residents of Barbados; (2) not more than 10 percent of the loan interest or dividends from the company is receivable by individuals who are resident in Barbados; and (3) the company elects not to receive credit in Barbados for foreign income taxes imposed on its foreign income. An IBC may act as a headquarters company with service income if originating in Barbados for persons resident outside of Barbados, whether or not it is incorporated in Barbados, if it is resident in Barbados "trading in the selling of services." Investment companies are companies, whether or not incorporated in Barbados, which exclusively conduct the business of buying, selling, holding, or managing securities.

#### D. The 1977 and 1979 Amendments

The amended Act of 1977<sup>5</sup> breathed new life into the IBCA. Prior to the 1977 Act, a qualifying company could be incorporated inside or outside of Barbados, but must have been engaged in trade while being controlled by nonresidents and beneficially owned by nonresidents to the extent of at least 90 percent. To qualify under the amended law, a company need be

<sup>3</sup>International Business Companies Act, 1965-50, L.N. 168/1967, Laws of Barbados, Ch. 77.

<sup>4</sup>See, e.g., LANGER, *supra* note 1, at 149-53.

<sup>5</sup>International Business Company (Exemption from Income Tax) Amended Act, 1977-60.

only "resident" in Barbados. A "resident company" is a company incorporated under the laws of Barbados or having its business managed and controlled in Barbados. A company will be deemed to be managed or controlled in Barbados if its annual general meetings and the majority of its other meetings of directors and shareholders are held in Barbados.<sup>6</sup>

A significant amendment under the 1977 Act is that IBCs no longer need to pay the corporate profits tax and then apply for a refund after operating for a year. In addition, under the 1977 Act, dividends paid out of profits or gains by IBCs to other IBCs or to nonresidents of Barbados are also exempted from income tax in Barbados if the recipients are not international investment companies. Dividends are taxed at reduced rates of 2½ percent up to (Bds.) \$10,000,000, decreasing to 1 percent over (Bds.) \$30,000,000 if the dividends are received by international investment companies.<sup>7</sup> Under a 1979 amendment, IBCs which are not investment companies must pay tax at the rate of 2½ percent of its profits or gains.<sup>8</sup> IBCs are especially advantageous when used in combination with tax conventions, as discussed in section V below. IBCs are particularly useful for investing in the U.S. They can be effectively used to invest in a portfolio of U.S. stocks, to license royalties and film rentals in the U.S., and to serve as management companies for entertainers and athletes who reside outside of the U.S.

#### IV. The Offshore Banking Act

On July 26, 1979, Barbados enacted an Offshore Banking Act<sup>9</sup> as a means of bolstering the ability of the island to act as an international financial center.

##### A. Definition

"Offshore banking" is defined in section 4 as the business of:

1. Receiving foreign funds through:
  - a. Acceptance of foreign money deposits payable upon demand or after a fixed period or after notice;
  - b. Sale or placement of foreign bonds, certificates, notes or other debt obligation or other foreign securities;
  - c. Any similar activity involving foreign money or foreign securities.
2. Using the foreign funds mentioned in (1) for:
  - a. Loans, advances and investments;
  - b. Activities of the person carrying on the business.
3. Acceptance in trust of:

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<sup>6</sup>*Id.* § 2(4) and (5).

<sup>7</sup>*Id.* § 3.

<sup>8</sup>International Business Company (Exemption from Income Tax) Amended Act, 1979-23. Supplement to Official Gazette, August 2, 1979.

<sup>9</sup>Offshore Banking Act, 1979. Barbados Laws, No. 26. Supplement to Official Gazette, August 9, 1979. For background on this legislation see E. BRATHWAITE, OFFSHORE BANKING CENTRES (Central Bank of Barbados, 1979).

- a. Amounts of money in foreign currencies or in foreign securities, or both;
- b. Foreign personal or moveable properties;
- c. Real or immovable property outside Barbados.

### *B. Eligibility and Application Requirements*

In order to incorporate under the Companies Act for the purpose of engaging in offshore banking from within Barbados, consent must be given by the Minister of Finance.

To be eligible to obtain a license, the applicant must be incorporated in Barbados as a company limited by shares. Its memorandum and articles of association, which must be acceptable to the Central Bank, must restrict its objects or business activities to offshore banking from within Barbados. At least one of its directors must be a resident citizen of Barbados, and the company must meet the requirements of authorized and paid-up capital.<sup>10</sup> The capital requirements are as follows: if the controlling persons are not residents of Barbados, the authorized capital must be at least (Bds.) \$2 million with at least (Bds.) \$1 million being subscribed and paid up in cash. If the controlling persons are residents of Barbados, the authorized capital need be only (Bds.) \$500,000 with at least (Bds.) \$250,000 being subscribed and paid up in cash.<sup>11</sup>

Each licensee also must meet capital reserve requirements. The company must maintain a reserve fund and transfer annually to the fund from net profits and before dividends, a sum equal to not less than 25 percent of those profits if the amount of reserve fund is less than the issued and paid-up capital. However, the Central Bank can waive these requirements if it considers that aggregate reserves are adequate for the conduct of business.<sup>12</sup>

An offshore bank may not declare and pay dividends if the licensee cannot meet its liabilities and if the realizable value of assets would be less than the aggregate of liabilities and capital accounts.<sup>13</sup>

### *C. Confidentiality*

The affairs of a customer of a licensee are kept confidential. The Ministry of Finance may, however, require the disclosure of the names of any residents of Barbados who are customers of the licensee. Statements, returns or information obtained from a licensee may not be disclosed or communicated to any person other than the Central Bank, the Minister of Finance, and other prescribed officers or persons.<sup>14</sup>

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<sup>10</sup>*Id.* § 7.

<sup>11</sup>*Id.* § 22.

<sup>12</sup>*Id.* § 23.

<sup>13</sup>*Id.* § 24.

<sup>14</sup>*Id.* § 49.

Confidentiality has been enhanced by an amendment of 1980<sup>15</sup> which provides that a licensee need only forward to the Minister of Finance copies of its balance sheet and profit and loss account, and full and correct names of its directors within five months after the close of the financial year or such longer period as the Minister may allow. Before the amendment, the licensee was required to publish this data in the Official Gazette and in a daily newspaper published in Barbados and exhibit the information thereafter in each of its offices and branches in Barbados.

Special prohibitions against disclosure apply to any person who has acquired confidential information concerning a licensee through his position as a director, officer, or auditor of the licensee, as a custodian of the licensee, or as an employee of the Central Bank. It is illegal for such persons to disclose that information to any person or to use that information for any personal benefit not related to the duties through which the information was acquired. However, confidential information may be provided in the following circumstances:

- a. When the information is a general credit rating of a person that is furnished in response to a "bona fide" business request;
- b. When the information is provided with the written authorization of the beneficiary or his legal representative;
- c. When the information is lawfully required to be disclosed by an order of the High Court; or
- d. When the information is lawfully disclosed pursuant to any other enactment.

#### D. Surveillance of Advertising Practices

In order to safeguard the respectability of the activities of an offshore bank, the Act provides that an offshore bank engaging in advertising practices that are likely to be misleading with respect to, *inter alia*, the true returns on the management of investments, the financial condition of the financial institution, etc., is guilty of an offense and liable on summary conviction to a fine of (Bds.) \$3,000. The licensee must furnish the Central Bank at prescribed intervals with copies of all of its advertisements.<sup>16</sup>

#### E. Taxation and Other Payments to the Barbados Government

Profits and gains of a licensee are subject to an annual tax at the same preferential rates which apply to international business companies.<sup>17</sup>

The Minister of Finance and the licensee may by agreement determine a tax higher than those set forth in (a) to (d) above.<sup>18</sup>

<sup>15</sup>Section 8 of the Barbados Offshore Banking (Amendment) Act, 1980-23; see also discussion in Zagaris, *Barbados Amends Its Offshore Banking Act*, 13 TAXES INT'L 51 (1980).

<sup>16</sup>Offshore Banking Act, 1979-26, § 60. Supplement to Official Gazette, August 9, 1979.

<sup>17</sup>*Id.* § 106.

<sup>18</sup>*Id.* § 107.

Regulations promulgated in 1980 set the fees to be paid by an applicant at: (Bds.) \$25,000 on the issuance of a license, and (Bds.) \$25,000 annually thereafter.<sup>19</sup>

Stamp duties must be paid by the licensee as follows:

1. *Registration of Companies*—Minimum fees for the registration of companies in Barbados are estimated to be:

	<i>Legal Fees</i> (Bds.)\$	<i>Registration Fees &amp; Expenses</i> (Bds.)\$
a. Registration of Foreign Companies	300	1,000-1,500
b. Formation of IBCs	1,000	1,000-1,500
c. Banking Companies	1,200	1,300

2. *Property Transfer Tax*—Nonresidents must pay a property transfer tax of 10 percent of the purchase price. Stamp duty is assessed at (Bds.) \$10 per \$1,000 or part thereof.<sup>20</sup>

#### F. *Exchange Control*

Dividends, royalties, foreign securities, funds, gains and assets generated or managed by a licensee are exempt from provisions of the Exchange Control Act.<sup>21</sup>

#### V. *Tax Treaties Between Barbados and Non-CARICOM Countries*

Barbados has in existence tax treaties with the United States, the United Kingdom, Norway, Sweden, Switzerland and Canada. These treaties offer unique tax planning opportunities not available to jurisdictions without a treaty network.<sup>22</sup>

##### A. *The U.S. Treaty*

The tax treaty between the United States and Barbados proffers advantageous planning opportunities for, *inter alia*, receiving dividends and royalties from the U.S. Although the U.S. Treasury has announced that it plans to renegotiate this and its existing tax treaties with former U.K. colonies, negotiations have not yet started.

##### 1. COMPANIES RECEIVING DIVIDENDS FROM THE U.S.

A Barbadian international business company (or a Barbadian resident company) can obtain relief from the U.S. domestic 30 percent withholding

<sup>19</sup>Offshore Banking (License Fees) Regulations, 1980. S.I. 1980, No. 128. Statutory Investments Supplement, No. 58. Supplement to Official Gazette, September 1, 1980.

<sup>20</sup>Offshore Banking Act, 1979-26, § 110. Supplement to Official Gazette, August 9, 1979.

<sup>21</sup>*Id.* § 113.

<sup>22</sup>For a similar discussion, see Zagaris, *The Status of Barbados as a Low Tax Jurisdiction*, 7 TAXES INT'L 3 (P.O. Box 8, London SE 21 8HQB, England 1980).



tax on dividends by the reduced treaty rate of either 5 percent<sup>23</sup> (if the Barbados resident or company controls directly or indirectly at least 95 percent of the entire voting power of the U.S. subsidiary paying the dividend) or 15 percent (for a "portfolio" investment) if the Barbados resident receiving dividends from a U.S. corporation is subject to Barbados tax on such dividends and is not "engaged in trade or business" in the U.S.:

*Example 1:* Bajan Ltd.—a Barbadian resident investment company—receives \$100,000 of dividends from its *portfolio investment* in the ABC company stock. Pursuant to the treaty, ABC withholds \$15,000 and sends the balance (\$85,000) to Bajan Ltd. Bajan Ltd. grosses-up the dividend to \$100,000 on which it is subject to \$2,500 Barbados income tax (Bajan Ltd. may not take a foreign tax credit since an international business company must elect not to take a foreign tax credit). When Bajan Ltd. distributes dividends to a person not resident in Barbados, no further tax is imposed by Barbados.

*Example 2:* Sunny Beach Ltd.—a Barbadian resident investment company—obtains \$100,000 of dividends from its *direct investment* in Sandy Beach Corp., a wholly-owned U.S. subsidiary. Since both the parent and the subsidiary qualify for the 5 percent U.S. withholding rate under the treaty, Sandy Beach withholds \$5,000 and sends the balance (\$95,000) to Sunny Beach Ltd. in Barbados. In grossing-up the dividend and the 46 percent U.S. corporate income tax, Sunny Beach Ltd. includes the 5 percent withholding tax paid by Sandy Beach. When Sunny Beach Ltd. distributes dividends to a person not resident in Barbados, no further tax is imposed by Barbados.

## 2. COMPANIES RECEIVING U.S. ROYALTIES AND FILM RENTALS

Under the U.S. Barbados tax treaty, a Barbadian resident or resident company is exempt on U.S. source royalties and other amounts received as consideration for the use of—or for the privilege of using—copyrights, patents, designs, secret processes and formulae, trademarks, and other like property, provided the Barbadian resident is subject to Barbados tax on such royalties or other amounts and is not "engaged in trade or business" in the U.S. Royalties also include rentals received in respect of motion picture films. An investment company under the Barbados International Business Company Act can be used to receive royalties from U.S. sources free of U.S. tax:

*Example 3:* X is an individual holding a patent in a country (e.g., Panama) which does not tax income earned outside of its territorial jurisdiction. X would normally pay 30 percent U.S. withholding tax on gross royalties received from licensing the patent directly. Instead, X can form the ABC

<sup>23</sup>See, however, a letter ruling of November 26, 1980, in which the IRS denied the 5 percent reduced dividend rate to a Barbados IBC because the 5 percent rate does not apply "if the relationship was not arranged or maintained primarily with the intention of securing the 5 percent reduced rate." 1981-08 I.R.B. 107 (IRS Index No. 9114.10-00).

company in Barbados to hold shares in a U.S. subsidiary. The U.S. subsidiary, which conducts other business, received the patent rights and a loan from ABC, and in return for the loan, agrees to transfer to it all of the payments received for the licensing of patent rights. Since the payments are received by ABC, a Barbadian resident who is subject to tax under Barbados law, no withholding tax is incurred under the U.S./Barbados treaty. The payments received by ABC are taxable at the rate of 2½ percent. No further taxes will be incurred by ABC.

### 3. MANAGEMENT COMPANIES FOR FOREIGN ENTERTAINERS AND ATHLETES PERFORMING IN THE U.S.

The U.S. Barbados Tax Treaty can be used to form management companies. These companies can then conclude contracts with U.S. persons to provide for performances by nonresident entertainers and athletes. Articles III and XI(1) of the tax treaty can be utilized to exempt income by both the management company from its industrial and commercial profits and by the entertainer/athlete on personal services performed on behalf of a Barbadian company, provided that the management company does not have a permanent establishment and the foreign individual is not present in the U.S. for more than 183 days. Since Revenue Rulings 74-330 and 74-331 have been issued by the Internal Revenue Service, additional safeguards must be taken to ensure the integrity of the management company and that of the employer-employee relationship between the company and the entertainer.<sup>24</sup>

*Example 4:* X is a music entertainer planning a tour in the U.S. He ordinarily pays a tax of up to 50 percent because previously his compensation was treated as income from personal services effectively connected with the conduct of a trade or business in the U.S. I.R.C., section 861(a)(3) and 864. Instead, X becomes an employee for ZBD Management Co. in Barbados, which supervises him, controls the manner and place of his performances, and meets the criteria set forth in R.R. 74-330 and 74-331 for a valid employer-employee relationship. ZBD Management contracts with U.S. persons for performances by X. The money paid to ZBD by U.S. persons is exempt under the U.S.-Barbados Tax Convention. ABC incurs a 2½ percent tax on the payments received from the U.S. ZBD then pays X his/her salary, which is not simply a pass through of the profits of ZBD.

#### *B. The New Canadian Treaty and Other Non-CARICOM Treaties*

On January 22, 1980, Canada and Barbados signed a tax treaty. Art. XXX(3) expressly does not apply to international business companies "or to companies entitled to any special benefits under any similar law enacted by

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<sup>24</sup>See Singer, *New Developments in Taxation of Foreign Entertainers and Employees*, 1976 LOS ANGELES BAR J. 388 (Feb. 1976).

Barbados in addition to or in place of the law." The treaty is significant in that many of its provisions have as their models ideas from the drafts of the U.N. group of experts on tax treaties between developed and developing countries.

The treaty provides that if a resident of one contracting state is a beneficial owner of *dividends* derived from the other contracting state, the withholding tax shall not exceed 15 percent of the gross amount of dividends. The article on dividends does not have the OECD reduced rate of withholding for parent-subsidiary groups nor does it have a minimum beneficial ownership requirement. It thus applies to both portfolio and direct investments.

Where *interest* is derived from sources within a contracting state by a resident of the other contracting state, who is subject to tax in the other state on that interest, the first mentioned (source) state's tax cannot exceed 15 percent of the gross amount of the interest. In addition, interest derived from sources within Barbados and paid to a resident of Canada shall be taxable only in Canada if it is paid on a loan made, or a credit extended, by the Canadian Export Development Corporation.

If *royalties* are derived from sources within a contracting state by a resident of the other contracting state, who is subject to tax in that other state in respect thereof, the rate of withholding tax imposed by the source state shall not exceed 10 percent of the gross amount of the royalties.

One of the most significant aspects of the treaty is the tax-sparing provisions accorded by Canada. When a company resident in Canada receives a dividend from its subsidiary resident in Barbados, the new treaty allows the Canadian company to reduce the amount of the dividend, for Canadian tax purposes, by the amount of income the Barbados company has accumulated free of Barbados tax. For purposes of computing its taxable income, and in computing its dividends, interest and royalties received from a company which is resident of Barbados, the treaty specifically refers to certain sections of seven different tax incentive laws of Barbados. The effect of these tax-sparing provisions is that the tax incentives accorded a Canadian affiliate by Barbados are not negated, as they are, for example, in the U.S., by a tax imposed up to the normal corporate tax rate in Canada. Instead, Canada foregoes the amount which would otherwise be taxable in order to make effective the tax incentive given to the Canadian affiliate by Barbados.<sup>25</sup>

Barbados also has tax treaties with the United Kingdom, Denmark, Norway, Sweden, and Switzerland. The U.K. has taken action which denies the benefits of the treaty to Barbadian IBCs.

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<sup>25</sup>For a more comprehensive discussion of the treaty and a copy of the text, see Zagaris, *Canada and Barbados Sign a New Income Tax Treaty*, 7 TAXES INT'L 4 (March, 1980).

## VI. Tax Treaties Between Barbados and CARICOM Countries

As a member of the Caribbean Common Market and Community, Barbados has entered into two tax agreements with the members of CARICOM. One is entitled "Agreement on the Harmonization of Fiscal Incentives to Industry in the Caribbean" which is intended to harmonize fiscal incentives the member states give to industry. The second agreement is entitled "Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Encouragement for International Trade and Investment in the Caribbean." These agreements may be useful either for a Barbadian company trading with these territories or for a company in another CARICOM territory investing in, or trading with, Barbados. By establishing an enterprise in CARICOM (e.g., Barbados) and trading in CARICOM, a foreign investor can utilize Barbados fiscal incentives and tax credits derived from exports as well as benefit from reduced withholding tax rates from the CARICOM agreement to avoid double taxation. The foreign investor can also utilize the Barbados tax treaty network to repatriate profits from Barbados. The utility of Barbados as a base from which to invest in CARICOM can be seen by considering how an IBC may obtain unique advantages in investments in a CARICOM country. For purposes of illustration, let us assume that the IBC is used to receive management fees in Grenada.

Under section 38 of the Grenada's People's Law No. 20 of 1980, if a person carrying on business in Grenada pays management fees to a nonresident, or a branch of a nonresident company pays to its head office or to some other branch of the company outside Grenada, a deduction is limited to the lesser of:

- the amount of such management fees or
- 1 percent of the deductions (exclusive of management charges) allowable under sections 36 and 37, which prescribe allowable deductions.

Section 38 of the Grenada Law also provides that if the management fees to which the section relates were incurred for services provided for one of the states comprising the Caribbean Common Market and the Comptroller General is satisfied that such expenditure was incurred in respect of services which could not reasonably be expected to be provided in Grenada, the Comptroller General may, in his discretion, permit as much as the deduction as appears to him to be reasonable. However, such permitted deduction may not exceed five times the 1 percent ceiling amount specified above. A foreign investor engaging in business in Grenada or in other CARICOM jurisdictions may therefore find it useful to utilize an international business company in Barbados to make these investments. Such a company may be able to achieve tax savings under the domestic legislation of the respective jurisdictions as well as through the CARICOM tax treaty which applied to

transactions between Barbados and Grenada and other members of CARICOM.<sup>26</sup>

## VII. Conclusion

The offshore banking legislation in combination with the laws concerning international business companies and the Barbados tax treaties make Barbados a unique new low-tax jurisdiction for international investments. Additional legislation is expected in the future to further enhance the status of Barbados service industries.

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<sup>26</sup>For a more comprehensive discussion of the Grenadian and similar legislation in the West Indies, see Zagaris, *Eastern Caribbean Countries Tax Foreign Payments*, 14 TAXES INT'L 42 (Dec. 1980).

