

S.I. 22/1987

**CHAPTER 206.****INCOME TAX ORDINANCE.**

**THE INCOME TAX (BRITISH VIRGIN ISLANDS ELECTRICITY LOAN) EXEMPTION ORDER, MADE NOVEMBER 18, 1987 UNDER SECTION 10 OF THE INCOME TAX ORDINANCE.**

[18th November, 1987]

Short title.

**1.** This Order may be cited as the Income Tax (British Virgin Islands Electricity Loan) Exemption Order.

Exemption from tax.

Cap. 277

**2.** The interest payable to persons not resident in the Territory of the Virgin Islands in respect of the loan authorised and raised by the British Virgin Islands Electricity Corporation Act, shall be exempt from income tax.

S.R.O. 56/1981

**THE INCOME TAX (EMPLOYMENTS) RULES, DATED NOVEMBER 24, 1981 UNDER SECTION 44A OF THE INCOME TAX ORDINANCE.**

[Rules 1-2 and 4-14 - 1st January, 1982]

[Rule 3 - 3rd December, 1981]

Short title.

**1.** These Rules may be cited as the Income Tax (Employments) Rules.

Interpretation.

**2.** In these Rules-

“Commissioner” and “resident” have the same meanings as in section 2 of the Ordinance;

“Ordinance” means the Income Tax Ordinance  
“remuneration” has the same meaning as in section 5(b) of the Ordinance;

“tax” means the income tax payable under section 5(b) of the Ordinance.

**3.** (1) Every person who pays or becomes liable to pay any remuneration to any employee shall register, within the time specified in subrule (2), with the Commissioner in the appropriate form provided by the Commissioner for the purpose.

Registration of employers.

(2) Every employer within thirty days of the coming into operation of this rule, and every person who becomes an employer after such operation within thirty days from the last day of the month in which he becomes an employer, shall register with the Commissioner in the manner referred to in subrule (1).

(3) Every employer who changes his registered business address or ceases to be an employer shall notify of such change of address or that he has ceased to be an employer to the Commissioner within thirty days of such change of address or ceasing to be an employer.

**4.** (1) The P.A.Y.E. Tax Tables issued under section 44A of the Ordinance shall bear the official seal of the Commissioner and the tax to be deducted shall be ascertained in accordance with such Tax Tables.

Deduction of tax.

(2) Where during any year an employee receives remuneration from more than one employment, the tax to be deducted in respect of each such employment shall be the amount as directed by the Commissioner.

**5.** (1) Every person shall on ceasing to be an employee or on the commencement of employment furnish a declaration to the Commissioner in such form as may be provided for the purpose.

Declaration of employee on commencement or ceasing employment.

(2) Every employee, who is not ordinarily resident or is temporarily resident in the Territory, shall furnish the Commissioner a declaration of his expected duration of residence in the Territory.

**6.** (1) The P.A.Y.E. Tax Tables shall specify the tax deductions to be made on the remuneration of employees.

P.A.Y.E. Tax Tables.

(2) The Commissioner shall from time to time issue such instructions as he may deem necessary as to the mode and manner of the use of the Tax Tables.

Tax deductions  
in variance with  
Tables.

**7.** (1) Every employer, at the written request of any employee and with the sanction of the Commissioner, may deduct from the remuneration payable to such employee, tax greater than the deductible tax under the Tax Tables.

(2) Where in relation to a year of assessment any employee is of opinion that the amount of tax required to be deducted by his employer under the Tax Tables, during the income year will substantially be greater than the amount chargeable in the year of assessment, he may apply to the Commissioner for the issue of a direction to his employer, and the Commissioner may, on being satisfied of the merits of the application of the employee, issue such directions to the employer relating to the deductions to be made from such employee, as he may deem fit.

(3) A request made by an employee under subrule (1) or a direction under subrule (2) may be withdrawn by notice in writing to the employer and upon such withdrawal the employer shall make tax deductions in accordance with the Tax Tables.

Prescribed date  
for payment of  
tax deductions.

**8.** The prescribed date under section 60 of the Ordinance for the purpose of payment of tax deducted from the remuneration of employees shall be the fifteenth of the month immediately following the month in which such deductions were made.

Payment of  
remuneration  
tax free.

**9.** Any agreement by an employer to pay any remuneration to an employee free of tax shall be construed to mean that the tax on such remuneration is payable by the employer and any tax paid by the employer thereon shall be deemed to be remuneration received by the employee.

Certificate of  
remuneration  
and tax  
deducted.

**10.** (1) Every employer who has deducted tax from his employees in any calendar year shall within the time in relation to the period specified in subrule (2) furnish to every employee to whom remuneration has been paid a certificate, in the form provided for the purpose, which shall contain —

- (a) the total remuneration paid to the employee; and
- (b) the total tax deductions from such remuneration.

(2) The certificate referred to in subrule (1) shall specify the period of employment to which it relates and shall be furnished to the employee or former employee—

- (a) where the employer has not ceased to be an employer in relation to that employee at the end of the calendar year, within one month after the end of that calendar year;
- (b) where the employer has ceased to be an employer in relation to that employee but has continued to be an employer in relation to other employees, on the date of cessation of the employment of that person; or
- (c) where the employer has ceased to be an employer in relation to all employees, within one month after the date on which he ceased to be an employer.

(3) Any employee who has not received a certificate within the time specified in subrule (2) shall apply to the employer forthwith for such certificate to be furnished and in the event of such certificate not being furnished within a further period of fifteen days he shall notify the Commissioner of such failure by the employer to furnish the certificate.

(4) Every employee, when furnishing his return of income for any year of assessment, shall attach to such return the certificate or certificates furnished to him under this rule.

(5) The certificate to be furnished under this rule by an employer to an employee may be delivered —

- (a) by hand to such employee or his authorised agent;
- (b) by registered letter addressed to that employee at his usual or last known postal address; or
- (c) where the chargeable income of that employee is not chargeable to tax in his name, by hand or registered letter, addressed to the person chargeable.

(6) In the event of inability to deliver a certificate in the manner provided by subrule (5), the employer shall retain such certificate and forward it to the Commissioner with the Return required under rule 14.

(7) In addition to the annual certificate referred to in subrule (1), on every occasion during the calendar year upon which a payment of remuneration is made to an employee from which tax is deducted under these Rules, the employer shall furnish to him particulars of the total remuneration payable for the pay period and of the amount of tax deducted therefrom.

Personal liability  
of employer and  
employee.

**11.** (1) Where in any calendar year, an employer fails to deduct any tax under rule 4, he shall, in addition to any penalty for which he may be liable, be personally liable to pay to the Commissioner within the time specified in the Ordinance, the amount which he has failed to deduct.

(2) Where an employer pays to the Commissioner the amount of tax which he failed to deduct, such amount shall be deemed to have been deducted under these Rules.

(3) Nothing in these Rules shall prevent the employer recovering from the employee any amount paid to the Commissioner under subrule (2).

(4) Where in relation to any payment of remuneration an employer has failed to deduct tax under rule 4, but the Commissioner is satisfied that the tax deducted under these Rules from earlier or later payments of remuneration is sufficient to meet the amount of tax which he has failed to deduct, the Commissioner may absolve the employer from his liability under subrule (1).

(5) Where the Commissioner is of the opinion that any amount of tax which has been included on a certificate under rule 10 has not been deducted by the employer with the knowledge and connivance of the employee, the employer and the employee shall be jointly and severally liable to pay to the Commissioner the amount which has been not deducted and such amount shall be recoverable under the Ordinance; but where the Commissioner is satisfied that the employee alone was responsible for the incorrect amount being shown on the certificate under rule 10 the employer shall be absolved from liability under this subrule.

(6) Where it is proved to the satisfaction of the Commissioner that any amount of tax has been deducted from the remuneration of any employee, notwithstanding that the employer has failed to pay such amount to the

Commissioner, no action shall be taken by the Commissioner for the recovery thereof from that employee.

**12.** Every employer shall, in respect of each of his employees, maintain a record showing in relation to each year of income, the amounts of—

Employer to keep records.

(a) the remuneration accrued to that employee; and

(b) tax deducted from such remuneration,

and such records shall be kept available for examination by the Commissioner as and when required.

**13.** Every employer shall, when making any payment within the time limit specified, furnish a Return showing the amount of tax deducted and remitted.

Employers monthly return.

**14.** (1) Every employer shall, in respect of each calendar year —

Employers annual return.

(a) within one month after the end of that year; or

(b) where he ceased to be an employer during that year, within 15 days after such cessation, or

(c) within such further time as the Commissioner may allow,

furnish to the Commissioner a Return showing the total amount of tax deducted by him in respect of all his employees during that year and the total payments of such tax made to the Commissioner.

(2) In the event of there being any deficiency between the total amount of tax deducted and total payments of such tax made to the Commissioner, the employer shall be required to account to the Commissioner for such deficiency.

S.R.O. 1/1952.

THE INCOME TAX (DOUBLE TAXATION RELIEF) (CANADA) ORDER  
MADE MARCH 28, 1952, UNDER SECTION 55 OF THE INCOME  
TAX ORDINANCE.

Short title.

**1.** This Order may be cited as the Income Tax  
(Double Taxation Relief) (Canada) Order.

Declaration.

**2.** It is hereby declared

- (a) that the arrangements specified in the Arrangement set out in the Schedule have been made with the Government of Canada with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of Canada; and
- (b) that it is expedient that those arrangements shall have effect.

SCHEDULE.

Arrangement between the Government of Canada and the Government of the Presidency of the Virgin Islands for the avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to taxes on income.

**1.** (1) The Taxes which are the subject of this Arrangement are —

(a) In Canada : The income taxes, including sur-taxes, and excess profits tax imposed by Canada (hereinafter referred to as “Canadian tax”).

(b) In the Presidency of the Virgin Islands : The income tax (hereinafter referred to as “Presidential tax”).

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in Canada or in the Presidency after this Arrangement has come into force.

**2.** (1) In this Arrangement, unless the context otherwise requires —

(a) The term “the Presidency” means the Presidency of the Virgin Islands.

(b) The terms “one of the territories” and “the other territory” means Canada or the Presidency as the context requires.

(c) The term "tax" means Canadian tax or Presidential tax, as the context requires.

(d) The term "person" includes any body of persons, corporate or not corporate.

(e) The term "company" includes any body corporate.

(f) The terms "resident of Canada" and "resident of the Presidency" mean respectively any person who is resident in Canada for the purposes of Canadian tax and not resident in the Presidency for the purposes of Presidential tax and any person who is resident in the Presidency for the purposes of Presidential tax and not resident in Canada for the purposes of Canadian tax; and a company shall be regarded as resident in Canada if its business is managed and controlled in Canada and as resident in the Presidency if its business is managed and controlled in the Presidency.

(g) The terms "resident of one of the territories" and "resident of the other territory" means a person who is a resident of Canada or a person who is a resident of the Presidency, as the context requires.

(h) The terms "Canadian enterprise" and "Presidential enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of Canada and an industrial or commercial enterprise or undertaking carried on by a resident of the Presidency; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a Canadian enterprise or a Presidential enterprise, as the context requires.

(i) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, or other fixed place of business, but does not include an agency in the other territory unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.



(2) The term "industrial or commercial profits" as used in this Arrangement, does not include income in the form of dividends, interest, rents or royalties, management charges, or remuneration for labour or personal services.

(3) In the application of the provisions of this Arrangement by Canada or the Presidency, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of Canada or, as the case may be of the Presidency, relating to the taxes which are the subject of this Arrangement.

**3.** (1) The industrial or commercial profits of a Canadian enterprise shall not be subject to Presidential tax unless the enterprise is engaged in trade or business in the Presidency through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Presidency but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Presidential enterprise shall not be subject to Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Canada, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(5) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### **4. Where—**

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

(c) in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

**5.** Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

**6.** (1) The rate of Canadian tax on income (other than earned income) derived from sources within Canada by a resident of the Presidency who is subject to Presidential tax in respect thereof and not engaged in trade or business in Canada through a permanent establishment situated therein, shall not exceed 15 per cent.

(2) Notwithstanding the provisions of the foregoing sub-paragraph, dividends paid to a company which is a resident of the Presidency by a Canadian company, all of whose shares (less directors' qualifying shares) which have under all circumstances full voting rights are beneficially owned by the former company, shall be exempt from Canadian tax:

Provided that exemption shall not be allowed if ordinarily more than one-quarter of the gross income of the Canadian company is derived from interest and dividends other than interest and dividends from any wholly-owned subsidiary company.

(3) Income (other than earned income) derived from sources within the Presidency by an individual who is a resident of Canada, subject to Canadian tax in respect of the income, and not engaged in trade or business in the Presidency through a permanent establishment situated therein, shall not be liable to tax in the Presidency at a rate in excess of the rate applicable to a company.

**7.** Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory who is liable to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

**8.** (1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory if the individual is not ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) Any person paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory, if immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under sub-paragraph (1) of this paragraph or otherwise, or would have been exempt under that sub-paragraph if the present Arrangement had been in force at the time when the remuneration was paid.

(3) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

**9.** (1) An individual who is a resident of the Presidency shall be exempt from Canadian tax on profits or remuneration in respect of personal (including professional) services performed within Canada in any taxation year if —

- (a) he is present within Canada for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person resident in the Presidency, and
- (c) the profits or remuneration are subject to Presidential tax.

(2) An individual who is a resident of Canada shall be exempt from Presidential tax on profits or remuneration in respect of personal (including professional) services performed within the Presidency in any year of assessment if —

- (a) he is present within the Presidency for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) the services are performed for or on behalf of a person resident in Canada, and
- (c) the profits or remuneration are subject to Canadian tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

**10.** (1) Any pension (other than a pension paid by the Government of Canada for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Canada by an individual who is a resident of the Presidency and subject to Presidential tax in respect thereof, shall be exempt from Canadian tax.

(2) Any pension (other than a pension paid by the Government of the Presidency for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the Presidency by an individual who is a resident of Canada and subject to Canadian tax in respect thereof, shall be exempt from Presidential tax.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

**11.** A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

**12.** A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

**13.** (1) Subject to the provisions of the law of the Presidency regarding the allowance as a credit against Presidential tax of tax payable in a territory outside the Presidency, Canadian tax payable in respect of income from sources within Canada shall be allowed as a credit against any Presidential tax payable in respect of that income. Where such income is an ordinary dividend paid by a Canadian debtor, the credit shall take into account (in addition to any Canadian income tax chargeable directly or by deduction in respect of the dividend) the Canadian income tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the Canadian income tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(2) For the purposes of the foregoing sub-paragraph and of the aforesaid provisions of the law of the Presidency, so much of the tax chargeable under the law of Canada relating to excess profits tax as is chargeable otherwise than by reference to excess profits shall be treated as income tax and not as excess profits tax.

(3) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada, Presidential tax payable in respect of income from sources within the Presidency shall be deducted from any Canadian tax payable in respect of that income.

(4) For the purposes of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

**14.** (1) The taxation authorities of Canada and the Presidency shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or

for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) The taxation authorities of Canada and the Presidency may consult together as may be necessary for the purpose of carrying out the provisions of this Arrangement and, in particular, the provisions of paragraphs 3 and 4.

(3) As used in this paragraph, the term "taxation authorities" means in the case of Canada the Minister of National Revenue or his authorized representatives; and, in the case of the Presidency the Income Tax Commissioners or their authorised representative.

**15.** This Arrangement shall be deemed to have come into force on the 26th day of September, 1951, and shall have effect—

- (a) in Canada, as respects income taxes, including sur-taxes, for the taxation year 1951 and subsequent years, and as respects excess profits tax for any fiscal period beginning on or after the first day of January, 1951, and for the unexpired portion of any fiscal period current at that date;
- (b) in the Presidency, as respects income tax for the year of assessment beginning on the first day of January, 1951, and subsequent years.

S.R.O. 9/1956.

**THE INCOME TAX (DOUBLE TAXATION RELIEF) (DENMARK)  
ORDER, MADE MARCH 27, 1956, UNDER SECTION 55 OF THE  
INCOME TAX ORDINANCE**

Short title.

**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (Denmark) Order.

Declaration.

**2.** It is hereby declared—

- (a) that the arrangements specified in the First Schedule as modified by the provisions of the Second Schedule, have been made with the Government of Denmark;
- (b) that it is expedient that those arrangements should have effect.

## FIRST SCHEDULE.

Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income.

## ARTICLE 1.

1. The taxes which are the subject of the present Convention are-

(a) In Denmark: The national income tax (including the extraordinary company tax) (hereinafter referred to as "Danish tax").

(b) In the United Kingdom of Great Kingdom and Northern Ireland: The income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax").

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Denmark or the United Kingdom subsequently to the date of signature of the present Convention.

## ARTICLE II.

1. In the present Convention, unless the context otherwise requires—

(a) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;

(b) The term "Denmark" means the Kingdom of Denmark, excluding the Faroe Islands and Greenland;

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Denmark, as the context requires;

(d) The term "tax" means United Kingdom tax or Danish tax, as the context requires;

(e) The term "person" includes any body of persons, corporate or not corporate;

(f) The term "company" means any body corporate;

(g) The terms "resident of the United Kingdom" and "resident of Denmark" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Denmark for the purposes of Danish tax, and any person who is resident in Denmark for the purposes of Danish tax and not resident in the United Kingdom for the purposes of United Kingdom tax; a company shall be

regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Denmark if its business is managed and controlled in Denmark;

(h) The terms "resident of one of the territories" and "resident of the other territory" means a person who is a resident of the United Kingdom or a person who is a resident of Denmark, as the context requires;

(i) The terms "United Kingdom enterprise" and "Danish enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Denmark, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Danish enterprise, as the context requires;

(j) The term "industrial or commercial profits" includes rents or royalties in respect of cinematograph films;

(k) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, but does not include any agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connexion-

- (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory mainly because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such;
- (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
- (iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

**2.** Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference only

to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

3. In the application of the provisions of the present Convention by one of the High Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

#### ARTICLE III.

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Danish tax unless the enterprise carries on a trade or business in Denmark through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Denmark, but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Danish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from the sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV.

Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control, or capital of an enterprise of the other territory, or



(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V.

1. The industrial and commercial profits of a company which is a resident of Denmark shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom Profits Tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom Profits Tax only at that lower rate.

2. Where a company which is a resident of Denmark controls, directly or indirectly, not less than 50 per cent. of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom Profits Tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

3. If the industrial and commercial profits of a company which is a resident of the United Kingdom become chargeable to a form of Danish tax under which, in the case of companies which are residents of Denmark, the undistributed or undistributable income is charged to tax lower at a lower rate than the distributed or distributable income of such companies, these industrial and commercial profits shall be charged to Danish tax only at the lower rate.

4. Where a company which is a resident of the United Kingdom beneficially owns not less than 50 per cent. of the entire ordinary share capital of a company which is a resident of Denmark, distributed or distributable income payable by the latter company to the former company shall be left out of account in computing the liability of the latter company to Danish tax at any higher rate appropriate to distributed or distributable income, and this shall apply, in particular, in computing the liability of the latter company to that part of the Danish extraordinary tax on companies known as Udbytterate.

#### ARTICLE VI.

1. Notwithstanding the provisions of Articles III, IV and V, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

2. The Agreement dated 18th December, 1924 (b), between the United Kingdom and Denmark for the reciprocal exemption from Income Tax in certain cases of profits accruing from the business of shipping shall not have effect for any year or period for which the present Convention has effect.

## ARTICLE VII.

1. (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Denmark, who is subject to tax in Denmark in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom sur-tax.

(b) Dividends paid by a company which is a resident of Denmark to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Denmark through a permanent establishment situated therein, shall not be chargeable to tax in addition to the tax on the profits out of which the dividends are paid at a rate exceeding 5 per cent.: Provided that where the resident of the United Kingdom is a company which beneficially owns not less than 50 per cent. of the entire ordinary share capital of the company paying the dividends, the dividends shall be exempt from any such tax on dividends.

2. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

## ARTICLE VIII.

1. Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed in respect of interest paid by a company which is a resident of one of the territories to a company which is a resident of the other territory where the latter company controls, either directly or indirectly, more than 50 per cent. of the entire voting power of the former company.

2. In this Article-

(a) the term "interest" includes interest on bonds, securities, notes, debentures or on any other form of indebtedness;

(b) the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does

not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

**3.** Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.

**4.** Any capital sum derived from one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE IX.

Income of whatever nature derived from real property within one of the territories (except interest on mortgages secured on real property) which shall be chargeable to tax in accordance with the laws of that territory. Where the said income is also chargeable to tax in the other territory, credit for the tax payable in the first-mentioned territory shall be given against the tax payable on that income in the other territory in accordance with Article XVII.

#### ARTICLE X.

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

#### ARTICLE XI.

**1.** Remuneration, including pensions, paid by, or out of funds created by, one of the High Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other High Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.

**2.** The provisions of this Article shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the High Contracting Parties for the purposes of profit.

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**ARTICLE XII.**

**1.** An individual who is a resident of the United Kingdom shall be exempt from Danish tax on profits or remuneration in respect of personal (including professional) services performed within Denmark in any year of assessment if—

(a) he is present within Denmark for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a resident of the United Kingdom, and

(c) the profits or remuneration are subject to United Kingdom tax.

**2.** An individual who is a resident of Denmark shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a resident of Denmark, and

(c) the profits or remuneration are subject to Danish tax.

**3.** The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artistes, musicians and athletes.

**ARTICLE XIII.**

**1.** Any pension, (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within Denmark by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Danish tax.

**2.** Any pension, (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Denmark and subject to Danish tax in respect thereof, shall be exempt from United Kingdom tax.

**3.** The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

**ARTICLE XIV.**

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a

university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XV.

A student or business apprentice from one of the territories, who is receiving full time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

#### ARTICLE XVI.

1. Individuals who are residents of Denmark shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom income tax as British subjects not resident in the United Kingdom.

2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances and reliefs for the purposes of Danish tax as Danish nationals not resident in Denmark.

#### ARTICLE XVII.

1. The laws of the High Contracting Parties shall continue to govern the taxation of income arising in either of the territories, except where express provision to the contrary is made in this Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs.

2. Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Danish tax payable, whether directly or by deduction, in respect of income from sources within Denmark shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Denmark, the credit shall take into account (in addition to any Danish tax appropriate to the dividend) the Danish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Danish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

3. United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a deduction from the Danish tax payable in respect of that income; Provided that the amount of the deduction shall not exceed the proportion of the Danish tax which such income chargeable to Danish tax bears to the total income chargeable to Danish tax. For the purposes of this paragraph only, the expression "Danish tax" shall include the Danish inter-municipal income tax.

4. In the case of a person who is resident in the United Kingdom for the

purposes of United Kingdom tax and is also resident in Denmark for the purposes of Danish tax, the provisions of paragraph 2 of this Article shall apply in relation to income which that person derives from sources within Denmark, and the provisions of paragraph 3 of this Article shall apply in relation to income which he derives from sources within the United Kingdom. If such person derives income from sources outside both the United Kingdom and Denmark, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the High Contracting Parties and the territory from which the income is derived). A credit shall be allowed in accordance with paragraph 2 of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within the United Kingdom bears to the sum of his income from sources within the United Kingdom and his income from sources within Denmark; and a deduction shall be allowed in accordance with paragraph 3 of this Article against any Danish tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within Denmark bears to the sum of his income from sources within the United Kingdom and his income from sources within Denmark.

5. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVIII.

1. The taxation authorities of the High Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representatives; in the case of Denmark, the Director-General of Taxation or his authorized representative; and, in the case of any territory to which the present Convention is extended under Article XX, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

## ARTICLE XIX.

1. The nationals of one of the High Contracting Parties shall not be subjected in the territory of the other High Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

2. The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or in partnership, shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher, or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like profits or capital.

3. The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher, or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits and capital.

4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the High Contracting Parties to grant to nationals of the other High Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to his own nationals.

5. In this Article the term "nationals" means—

(a) in relation to Denmark, all Danish citizens and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Denmark or in any Danish territory to which the present Convention applies by reason of extension made under Article XX;

(b) in relation to the United Kingdom, all British subjects and British-protected persons residing in the United Kingdom or in any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in any British territory to which the present Convention applies.

6. In this Article the term "taxation" means taxes of every kind and description levied on behalf of any authority whatsoever.

## ARTICLE XX.

1. The present Convention may be extended, either in its entirety or with modifications, to any territory of one of the High Contracting Parties to which this Article applies and which imposes taxes substantially similar in character to

those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.

**2.** The termination in respect of Denmark or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

**3.** The territories to which this Article applies are—

(a) in relation to the United Kingdom: any territory other than the United Kingdom for whose international relations the United Kingdom is responsible;

(b) in relation to Denmark: any territory other than Denmark for whose international relations Denmark is responsible;

#### ARTICLE XXI.

**1.** The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

**2.** Upon exchange of ratifications the present Convention shall have effect—

(a) in the United Kingdom :

as respects income tax for any year of assessment beginning on or after the 6th April, 1949;

as respects sur-tax for any year of assessment beginning on or after the 6th April, 1948; and

as respects profits tax in respect of the following profits—

(i) profits arising in any chargeable accounting period beginning on or after the 1st April, 1949;

(ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

(iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the 6th April, 1949.

(b) In Denmark:

as respects Danish tax for any taxation year beginning on or after the 1st April, 1949.

#### ARTICLE XXII.

The present Convention shall continue in effect indefinitely but either of the



High Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1953, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective—

(a) In the United Kingdom:

as respects income tax for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

as respects sur-tax for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given; and

as respects profits tax in respect of the following profits—

- (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the next following year.

(b) In Denmark—

as respects Danish tax for any taxation year beginning on or after the 1st April in the calendar year next following that in which the notice is given.

## SECOND SCHEDULE

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**1.** APPLICATION (a) The provisions of the Convention incorporated in the First Schedule shall apply as modified below—

- (i) as if the contracting parties were the Presidency of the Virgin Islands and the Government of Denmark;
- (ii) as if the tax concerned in the case of the Presidency were the tax on income imposed by the Income Tax Ordinance, 1946, as amended;
- (iii) as if the taxes concerned in the case of Denmark included the Defence Tax;

(iv) as if references to the date of signature were references to the 22nd day of December, 1954;

(v) as if references to the 6th day of April were references to the 1st day of January.

(b) The extension shall have effect in the Presidency as respects tax for the year of assessment 1954 and for subsequent years of assessment (and will have effect in Denmark - as respects Danish tax for any taxation year beginning on or after the first day of April 1954).

(c) The extension shall continue in effect indefinitely but may be terminated as respects the Presidency by written notice of termination given on or before the 30th day of June in any calendar year not earlier than the year 1957 by either of the High Contracting Parties to the Convention to the other High Contracting Party through the diplomatic channel and in such event the extension shall cease to have effect in the Presidency as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, (and will cease to have effect in Denmark as respects Danish tax for any taxation year beginning on or after the first day of April in the calendar year next following that in which the notice is given).

**2. MODIFICATIONS.** (a) In Article VII (1) of the Convention the words "exempt from United Kingdom sur-tax" shall be understood for the purposes of this extension as though they read "shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company."

(b) In Articles VIII and IX all references to interest shall be deemed to be deleted.

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S.R.O. 29/1973.

THE INCOME TAX (DOUBLE TAXATION RELIEF) (JAPAN) ORDER, MADE  
NOVEMBER 13, 1973 UNDER SECTION 55 OF THE INCOME TAX  
ORDINANCE.

(25th September, 1970)

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**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (Japan) Order. Short title.

**2.** It is hereby declared that— Declaration.

(a) the arrangements specified in the First Schedule, as modified by the provisions of the Second Schedule, have been made with the Government of Japan;

(b) it is expedient that those arrangements should have effect.

## FIRST SCHEDULE

## CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan:

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income:

Have agreed as follows:

1. The taxes which are the subject of the present Convention are -

(a) In the United Kingdom of Great Britain and Northern Ireland.

The income tax (including surtax) and the profits tax (hereinafter referred to as "United Kingdom tax"):

(b) In Japan—

The income tax and the corporation tax (hereinafter referred to as "Japanese tax"):

and the local taxes referred to in Articles V and XVII of the present Convention.

2. The present Convention shall also apply to any other taxes of a character substantially similar to those referred to in the preceding paragraph imposed in the United Kingdom or Japan subsequently to the date of signature of the present Convention.

## ARTICLE II.

1. In the present Convention, unless the context otherwise requires:

(a) the term "United Kingdom" means Great Britain and Northern Ireland;

(b) the term "Japan", as used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;

(c) the terms "one of the Contracting States" and "the other Contracting State" means the United Kingdom or Japan, as the context requires;

(d) the term "tax", means United Kingdom tax or Japanese tax, as the context requires;

(e) the term "United Kingdom corporation" means any body corporate which is managed and controlled in the United Kingdom and which is not a Japanese corporation, and the term "Japanese corporation" means any corporation or other association having juridical personality or any association without juridical personality which has its head or principal office in Japan; and the terms "corporation of one of the Contracting States" and "corporation of the other

Contracting State" mean a United Kingdom corporation or a Japanese corporation, as the context requires;

(f) the terms "resident of the United Kingdom" and "resident of Japan" mean respectively any individual who is a resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Japan for the purposes of Japanese tax, and any individual who is resident in Japan for the purposes of Japanese tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and the terms "resident of one of the Contracting States" and "resident of the other Contracting State" mean a resident of the United Kingdom or a resident of Japan, as the context requires;

(g) the terms "United Kingdom enterprise" and "Japanese enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident or corporation of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident or corporation of Japan, and the terms "enterprise of one of the Contracting States" and "enterprise of the other Contracting State" mean a United Kingdom enterprise or a Japanese enterprise, as the context requires;

(h) the term "industrial or commercial profits" includes manufacturing, mercantile, agricultural, fishing, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rent, a royalty as defined in paragraph (2) of Article VIII, a sum of the kind referred to in paragraph (3) of that Article, a royalty or other amount of the kind referred to in paragraph (6) of that Article, gains derived from the alienation of capital assets or remuneration for personal services;

- (i) (i) The term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on
- (ii) A permanent establishment shall include especially:
  - (aa) a place of management;
  - (bb) a branch;
  - (cc) an office;
  - (dd) a factory;
  - (ee) a workshop;
  - (ff) a mine, quarry or other place of extraction of natural resources;
  - (gg) a building site or construction or assembly project which exists for more than twelve months.
- (iii) The term "permanent establishment" shall not be deemed to include
  - (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

- 
- (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage display or delivery;
  - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character for the enterprise;
  - (iv) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if—
    - (aa) it carries on supervisory activities in that other Contracting State for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;
    - (bb) it carries on a business which consists of providing the services of public entertainers referred to in paragraph (5) of Article X in that other Contracting State.
  - (v) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State - other than an agent of an independent status to whom sub-paragraph (i) (vi) applies - shall be deemed to be a permanent establishment in the former Contracting State if
    - (aa) he has, and habitually exercises in the former Contracting State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
    - (bb) he maintains in the former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.
  - (vi) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.
  - (vii) The fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation of the other Contracting State, or which carries on business in that other Contracting State (whether through a permanent establishment or

otherwise), shall not of itself constitute either corporation a permanent establishment of the other.

(j) the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of Japan, the Minister of Finance or his authorised representative; and in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes in which the present Convention applies.

**2.** Where the present Convention provides (with or without other conditions) that income from sources in one of the Contracting States shall be exempt from tax of, or taxed at a reduced rate by, that Contracting State if it is subject to tax in the other Contracting State, and under the law in force in that other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under the present Convention in the former Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

**3.** In the application of the provisions of the present Convention by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of the present Convention.

### ARTICLE III.

**1.** (a) The Industrial or commercial profits of a United Kingdom enterprise shall not be subject to Japanese tax unless the enterprise carries on a trade or business in Japan through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Japan but only on so much of them as is attributable to that permanent establishment.

(b) The industrial or commercial profits of a Japanese enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

**2.** Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other Contracting State if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

**3.** In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses which would be deductible if

the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment including executive and general administrative expenses so deductible and allocable, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

4. No portion of any profits arising to an enterprise of one of the Contracting States shall be attributed to a permanent establishment situated in the Contracting State by reason of the mere purchase of goods or merchandise within that other Contracting State by the enterprise.

#### ARTICLE IV.

Where—

(a) an enterprise of one of the Contracting States participates directly or indirectly in the management, control, or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the Contracting States and an enterprise of the other Contracting State,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V.

1. Notwithstanding the provisions of Article III, profits which an enterprise of one of the Contracting States derives from the operation of ships or aircraft shall be exempt from tax of the other Contracting State.

2. An enterprise of one of the Contracting States shall likewise be exempt from any local tax in the other Contracting State which is or may be imposed on the basis of profits derived from the operation of ships or aircraft.

3. The Agreement between the Contracting States constituted by the Notes exchanged in London on the 10th August, 1929,\* for the reciprocal exemption from taxation on shipping profits shall, on the entry into force of the present Convention, cease to be effective as from the dates from which the provisions of the present Convention have effect.

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\* "Treaty Series No. 25 (1929)", Cmd. 3396

## ARTICLE VI.

1. (a) Dividends derived from sources within the United Kingdom by a resident of Japan who is subject to Japanese tax in respect thereof shall be exempt from United Kingdom surtax.

(b) Dividends derived from sources within Japan by a resident of the United Kingdom or a United Kingdom corporation that is subject to United Kingdom tax in respect thereof shall not be subject to tax in Japan at a rate exceeding 15 per cent. However, the rate of tax shall not exceed 10 per cent on a dividend paid by a Japanese corporation to a United Kingdom corporation if, during the whole of the taxable year for which the dividend is paid, more than 50 per cent of the voting shares of the Japanese corporation was beneficially owned by the United Kingdom corporation.

2. Where a corporation of one of the Contracting States derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the corporation unless such dividends are paid to a resident or a corporation of that other Contracting State, or any tax in the nature of an undistributed profits tax on undistributed profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

3. The provisions of paragraph (1) of this Article shall not apply where a resident or a corporation of one of the Contracting States has a permanent establishment in the other Contracting State and such dividends are attributable to that permanent establishment; in such event such dividends as are attributable to that permanent establishment shall be treated as if they were industrial or commercial profits to which the provisions of Article III are applicable.

4. If any of the rates of tax on the profits of corporations are altered in either Contracting State, the taxation authorities of the two Contracting States may consult each other in order to determine whether it is necessary for this reason to amend the provisions of paragraph (1) of this Article.

## ARTICLE VII.

1. The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State by a resident or a corporation of the other Contracting State, that is subject to tax in that other Contracting State in respect thereof, shall not exceed 10 per cent.

2. The provisions of paragraph (1) of this Article shall not apply where a resident or a corporation of one of the Contracting States has a permanent establishment in the other Contracting State and such interest is attributable to that permanent establishment; in such event such interest as is attributable to that permanent establishment shall be treated as if it were industrial or commercial profits to which the provisions of Article III are applicable.



3. The term "interest" as used in the present Convention means interest on bonds, securities, notes, debentures, or any other form of indebtedness (including mortgages or bonds secured by immovable property), as well as any excess of the amount repaid in respect of any form of indebtedness over the amount lent.

4. Where owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In that case, the excess part of the payments shall remain taxable according to the Contracting States own laws, due regard being had to the other provisions of the present Convention.

#### ARTICLE VIII.

1. The rate of tax imposed by one of the Contracting States on any royalty derived from sources within that Contracting State by a resident or a corporation of the other Contracting State, that is subject to tax in that other Contracting State in respect thereof, shall not exceed 10 per cent.

2. The term "royalty" (as used in paragraph (1) of this Article) means any royalty or other amount paid as consideration for the use of, or for the right to use, any copyright, patent, design, secret process or formula, trade mark or other like property, and includes any rental or like payment in respect of cinematograph or television films or for the use of industrial, commercial or scientific equipment.

3. The rate of tax imposed by one of the Contracting States on any sum arising within that Contracting State from the alienation of copyrights, patents, designs, secret processes and formulae, trade marks or other industrial inventions or of cinematograph or television films or rights therein and paid to a resident or a corporation of the other Contracting State and shall not exceed 10 per cent.

4. The provisions of paragraphs (1) and (3) of this Article shall not apply where a resident or a corporation of one of the Contracting States has a permanent establishment in the other Contracting State and such royalty or sum is attributable to that permanent establishment; in such event such royalty or sum as is attributable to that permanent establishment shall be treated as if it were industrial or commercial profits to which the provisions of Article III are applicable.

5. Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the royalty or the sum paid, having regard to the use right or property for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of the preceding paragraphs of this Article shall apply only to the last mentioned amount. In that case, the excess part of the payments shall remain taxable according to the Contracting States own laws, due regard being had to the other provisions of the present Convention.

6. Any royalty or other amount paid in respect of the operation of a mine, quarry or any other place of extraction of natural resources may be taxed in the Contracting State in which the mine, quarry or place of extraction is situated.

#### ARTICLE IX.

1. Gains derived from the alienation of capital assets (other than any sum referred to in paragraph (3) of Article VIII) in one of the Contracting States by a resident or a corporation of the other Contracting State shall be exempt from tax of that former Contracting State.

2. Notwithstanding the provisions of paragraph (1) of this Article:

(a) gains derived from the alienation of immovable property situated in one of the Contracting States or of rights to use such property or to operate a mine, quarry or other place of extraction of natural resources situated in that Contracting State by a resident or corporation of the other Contracting State may be taxed in that former Contracting State;

(b) gains derived from the alienation of a permanent establishment or fixed base situated in one of the Contracting States or from the alienation of capital assets pertaining to such permanent establishment or fixed base may be taxed in that Contracting State; in such event those gains shall be deemed to be attributable to that permanent establishment or fixed base;

(c) gains derived by a resident of one of the Contracting States from the alienation of personal property in the other Contracting State during his stay in that other Contracting State may be taxed in that other Contracting State;

(d) gains derived by a resident or a corporation of one of the Contracting States from the alienation of shares of a corporation of the other Contracting State may be taxed in that other Contracting State, if

- (i) shares held or owned by the alienator (together with such shares held or owned by any other related persons as may be aggregated therewith) amount to at least 25 per cent. of the entire share capital of such corporation at any time during the taxable year or year of assessment, and
- (ii) the total of the shares alienated by the alienator and such related persons during that taxable year or year of assessment amounts to at least 5 per cent. of the entire share capital of such corporation.

#### ARTICLE X.

1. Income derived by a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall not be subject to tax in the other Contracting State unless he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that fixed base may be taxed in that other Contracting State.

2. Subject to the provisions of Articles XI to XIV, salaries wages and similar remuneration derived by a resident of one of the Contracting States in respect of an employment shall not be subject to tax in the other Contracting State unless the employment is exercised in that other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

3. Notwithstanding the provisions of paragraph (2) of this Article, remuneration derived by a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be exempt from tax of that other Contracting State in any taxable year or year of assessment, if

(a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) he is employed by a resident or a corporation of the former Contracting State and is paid by or on behalf of that resident or corporation, and

(c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in that other Contracting State.

4. In relation to the remuneration of a director of a company or a corporation derived from the company or the corporation the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment, and as if the reference to an employer were a reference to the company or the corporation.

5. Notwithstanding the provisions of paragraphs (1) and (3) of this Article, the profits or remuneration of public entertainers, such as theatre motion picture, radio or television artistes, musicians and athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

6. Notwithstanding the provisions of paragraphs (2) to (5) of this Article, where an individual performs services as an employee on ships or aircraft operated by an enterprise of one of the Contracting States, such services shall be deemed to be exercised in that Contracting State.

#### ARTICLE XI.

1. (a) Remuneration (not being a pension) paid by the Government of Japan or any local government of Japan to any individual in respect of services rendered in the discharge of governmental functions and any pension paid to such an individual in respect of such services shall be exempt from United Kingdom tax, unless the individual is ordinarily resident in the United Kingdom, and, where the remuneration is not a pension, is not so resident solely for the purpose of rendering those services.

(b) Remuneration, including pensions, paid out of public funds of the United Kingdom or Northern Ireland or the funds of any local authority in the United Kingdom to any individual in respect of services rendered in the discharge of

governmental functions shall be exempt from Japanese tax, unless the individual is a national of Japan, or is admitted to Japan for permanent residence therein.

**2.** The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on for purposes of profit.

#### ARTICLE XII.

**1.** Pensions and other similar remuneration received in respect of past employment by a resident of one of the Contracting States who is subject to tax there in respect thereof shall be exempt from tax of the other Contracting State.

**2.** The provisions of paragraph (1) of this Article shall not apply to pensions of the kind referred to in paragraph (1) of Article XI, or to other pensions in the nature of social security provision paid by the Government of Japan or any local government or government agency of Japan or paid, out of funds to which the Government of Japan or any local government or government agency of Japan contributes.

#### ARTICLE XIII.

A professor or teacher from one of the Contracting States, who visits the other Contracting State for a period not exceeding two years for the purposes of teaching at a university, college, school or other educational institutions in that other Contracting State, shall be exempt from tax of that other Contracting State in respect of remuneration for that teaching.

#### ARTICLE XIV.

**1.** An individual from one of the Contracting States who is temporarily present in the other Contracting State solely as a student at a recognised university, college or school, or as a business apprentice, shall be exempt from tax of that other Contracting State in respect of—

(a) remittances from the former Contracting State for the purpose of his maintenance education or training and

(b) any scholarship or similar grant allowance or award.

**2.** An individual from one of the Contracting States who is temporarily present in the other Contracting State for a period not exceeding two years as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organisation shall be exempt from tax of that other Contracting State in respect of the amount of such grant, allowance or award.

**3.** An individual from one of the Contracting States who is an employee of, or is under contract with, an enterprise of that Contracting State or any such organisation of that Contracting State as is referred to in paragraph (2) of this Article, and who is temporarily present in the other Contracting State for a period not exceeding one year solely to acquire technical, professional or business experience from a person other

than such enterprise or organisation, shall be exempt from tax of that other Contracting State on remittances from the former Contracting State for the purpose of his maintenance.

#### ARTICLE XV.

**1.** Individuals who are residents of Japan shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom income tax as British subjects not resident in the United Kingdom.

**2.** Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Japanese income tax as Japanese nationals not resident in Japan.

#### ARTICLE XVI.

**1.** For the purposes of the present Convention:

(a) dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State;

(b) interest paid by one of the Contracting States, including local governments thereof, or by an enterprise of one of the Contracting States, shall be treated as income from sources within such Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft) which is paid

(i) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident or a corporation of the other Contracting State, or

(ii) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State

on indebtedness incurred for the use of (or, in the case of a banking business, on deposits made with) the permanent establishment in the conduct of its trade or business and which is borne by that permanent establishment shall be treated as income from sources within the territory where the permanent establishment is situated;

(c) royalties as defined in paragraph (2) of Article VIII shall be treated as income from sources within the Contracting State in which the property referred to in that paragraph is used;

(d) sums derived from the alienation of the property referred to in paragraph (3) of Article VIII shall be treated as arising from sources within the Contracting State in which such property is used.

**2.** For the purposes of Article XVII:

(a) income in respect of professional services or other independent activities of a similar character shall be deemed to be income from sources within the Contracting State in which the services or activities are performed;

(b) salaries, wages or similar remuneration in respect of an employment or directorship shall be deemed to be income from sources within the Contracting State in which the employment or directorship is exercised;

(c) income derived from immovable property (not including interest from mortgages or bonds secured by immovable property) shall be treated as income derived from sources within the Contracting State in which the immovable property is situated.

#### ARTICLE XVII.

1. The laws of the Contracting States shall continue to govern the taxation of income arising in either of the Contracting States, except where express provision to the contrary is made in the present Convention. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

(a) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Japanese tax payable, whether directly or by deduction, in respect of income from sources within Japan shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is a dividend paid by a Japanese corporation to a United Kingdom company, which controls, directly or indirectly, not less than 25 per cent. either of the voting shares of the Japanese corporation or of the total shares issued by that corporation, the credit shall take into account the Japanese tax payable by the Japanese corporation in respect of its profits.

(b) For the purposes of this paragraph, the term "Japanese tax" shall be taken to include local taxes in so far as they are levied on profits or income.

3. Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom, shall be allowed as a credit against the Japanese tax payable in respect of that income. Where such income is a dividend paid by a United Kingdom company to a Japanese corporation which owns not less than 25 per cent, either of the voting shares of the United Kingdom company or of the total shares issued by that company, the credit shall take into account the United Kingdom tax payable by the United Kingdom company in respect of its profits.

#### ARTICLE XVIII.

The provisions of the present Convention shall not be construed so as to restrict in any manner any exemption, relief, deduction, credit or other allowance now or hereafter accorded by the laws of either of the Contracting States in determining the tax of that Contracting State.

## ARTICLE XIX.

The taxation authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the taxes, which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the tax or the determination of appeals in relation thereto. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

## ARTICLE XX.

1. Where a taxpayer shows to the satisfaction of the taxation authorities of the Contracting State of which the taxpayer is a resident or a corporation that the taxpayer has not received the treatment in the other Contracting State to which the taxpayer is entitled under any provision of the present Convention, those taxation authorities shall consult with the taxation authorities of the other Contracting State with a view to the avoidance of the double taxation in question.

2. The taxation authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention and for resolving any difficulty or doubt as to the application or interpretation of the present Convention.

## ARTICLE XXI.

1. The nationals of one of the Contracting States shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which the nationals of that other Contracting State in the same circumstances are or may be subjected.

2. The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

3. Enterprises of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents or corporations of the other Contracting State, shall not be subjected in the former Contracting State, to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the former Contracting State are or may be subjected.

4. In this Article the term "nationals" means:

(a) in relation to the United Kingdom:

- (i) all citizens of the United Kingdom and Colonies and British protected persons other than those citizens and protected persons who derive their status as such from connection with any territory to which the present Convention may be extended under Article XXII but has not been so extended;
- (ii) all citizens of Rhodesia and Nyasaland provided that the present Convention has been extended under Article XXII to the Federation of Rhodesia and Nyasaland; and
- (iii) all legal persons, partnerships, associations and other entities, deriving their status as such from the law in force in the United Kingdom or any territory to which the present Convention is extended under Article XXII;

(b) in relation to Japan, all individuals possessing the nationality of Japan and all corporations and other associations (with or without juridical personality) deriving their status as such from the law in force in Japan.

**5.** In this Article the term "taxation" means taxes of every kind.

**6.** Nothing contained in this Article shall be construed—

(a) as obliging either of the Contracting States to grant to nationals of the other Contracting State not resident in the former Contracting State whose personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that former Contracting State; or

(b) as affecting the provisions of the Japanese law under which distributed profits are, in the case of Japanese corporations, taxed at a lower rate than undistributed profits.

#### ARTICLE XXII.

**1.** The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including, if necessary, conditions as to the entry into force and termination of such extension) as may be specified and agreed between the Contracting States.

**2.** The termination by the United Kingdom or Japan of the present Convention under Article XXIV shall, unless otherwise expressly agreed by both Contracting States, terminate the application of the present Convention to any territory to which the present Convention has been extended under this Article.

#### ARTICLE XXIII.

**1.** The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.



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**2.** Upon the exchange of the instruments of ratification the present Convention shall enter into force,\* and its provisions shall have effect:

(a) in the United Kingdom:

as respects income tax (including surtax) for any year of assessment beginning on or after the sixth day of April in the Calendar year in which the exchange of the instruments of ratification takes place; and

as respects profits tax in respect of the following profits—

- (i) profits by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the sixth day of April in the said Calendar year;
- (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the first day of April in the said calendar year or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

(b) In Japan:

as respects income for any taxable year beginning on or after the first day of January in the calendar year in which the exchange of instruments of ratification takes place.

#### ARTICLE XXIV.

Either of the Contracting States may terminate the present Convention after a period of five years from the date on which the present Convention enters into force by giving to the other Contracting State, through the diplomatic channel, written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year, and, in such event, the present Convention shall cease to be effective:

(a) In the United Kingdom:

as respects income tax (including surtax) for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which the notice is given;

as respects profits tax in respect of the following profits—

- (i) profits by reference to which income tax is chargeable for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which the notice is given;
- (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the first day of April in the next following calendar year or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

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\* The Convention entered into force on April 23, 1963

*(b)* In Japan:

as respects income for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Convention.

Done in duplicate at Tokyo this fourth day of September one thousand nine hundred and sixty-two, in the English and Japanese languages, both texts being equally authoritative.

For the Government of  
The United Kingdom of  
Great Britain and  
Northern  
Ireland:  
O.C. MOORLAND

For the Government of Japan:

MASOYOSHI OHIRA

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SECOND SCHEDULE.

**1.** The provisions of the Convention in the First Schedule shall Application.  
apply as modified below as if the—

(a) Contracting Parties were the Government of Japan and the Government of the Virgin Islands;

(b) term "United Kingdom" (except where the context otherwise requires) means the Virgin Islands;

(c) taxes concerned in the case of the Virgin Islands were Income Tax in the Virgin Islands; and

(d) reference to "the date of signature of the present Convention" in paragraph (2) of Article 1 were a reference to the 25th day of September, 1970.

**2.** The present extension shall have effect:

(a) in Japan as respects income for any taxable years beginning on or after the first day of January, 1963, and

(b) in the Virgin Islands as respects tax for the year of assessment beginning 1st January, 1963 and for subsequent years of assessment.

**3.** Nothing in paragraph 2 above shall be construed as overriding the time limitation, prescribed by the law of Japan or of the Virgin Islands, for the correction of the tax amount and the refunding connected therewith.

**4.** The Government of the United Kingdom shall inform the Japanese Government in writing through the diplomatic channel when the necessary measures as indicated in paragraph 2 have been completed in the Virgin Islands.

**5.** Either the Government of the United Kingdom or the Government of Japan may, on or before the 30th day of June in any calendar year give to the other Government through the diplomatic channel written notice of termination in relation to the Virgin Islands and in such event the present extension shall cease to have effect:

(a) in Japan as respects income for the taxable years beginning the first day of January in the calendar year next following that in which notice is given.

(b) in the Virgin Islands as respects taxes charged for any year of assessment beginning on or after the first day of January in the calendar year next following that in which notice is given.

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S.R.O. 1/1951.

THE INCOME TAX (DOUBLE TAXATION RELIEF) (NEW ZEALAND)  
ORDER, MADE OCTOBER 29, 1951, UNDER SECTION 55 OF THE  
INCOME TAX ORDINANCE.

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Short title.

**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (New Zealand) Order.

Declaration.

**2.** It is hereby declared—

(a) that the arrangements specified in the Arrangement set out in the Schedule have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of New Zealand; and

(b) that it is expedient that those arrangements shall have effect.

## SCHEDULE.

Arrangement between the Government of New Zealand and the Government of the Presidency of the Virgin Islands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

**1.** (1) The Taxes which are the subject of this Arrangement are—

(a) In New Zealand:

the Income Tax and social security charge (hereinafter referred to as “New Zealand tax”).

(b) In the Presidency of the Virgin Islands:

the Income Tax (hereinafter referred to as “Presidential tax”).

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in New Zealand or in the Presidency after this Arrangement has come into force.

**2.** (1) In this Arrangement, unless the context otherwise requires—

(a) The term “New Zealand” includes all islands and territories within the limits thereof for the time being, including the Cook Islands.

(b) The term “the Presidency” means the Presidency of the Virgin Islands.

(c) The terms “one of the territories” and “the other territory” mean New Zealand or the Presidency as the context requires.

(d) The term “tax” means New Zealand tax or Presidential tax, as the context requires.

(e) The term “person” includes any body of persons, corporate or not corporate.

(f) The term “company” includes any body corporate.

(g) The terms “resident of New Zealand” and “resident of the Presidency” mean respectively any person who is resident in New Zealand for the purposes of New Zealand tax and not resident in the Presidency for the purposes of Presidential tax and any person who is resident in the Presidency for the purposes of Presidential tax and not resident in New Zealand for the purposes of New Zealand tax; and a company shall be regarded as resident in New Zealand if its business is managed and controlled in New Zealand and as resident in the Presidency if its business is managed and controlled in the Presidency.

(h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of New Zealand or a person who is a resident of the Presidency, as the context requires.

(i) The terms “New Zealand enterprise” and “Presidential enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand and an industrial or commercial enterprise or undertaking carried on by a resident of the Presidency; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a New Zealand

enterprise or a Presidential enterprise, as the context requires;

(j) The term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term "industrial or commercial profits" includes profits from such activities or business but does not include income in the form of dividends, interest, rents, royalties, management charges, or remuneration for personal services.

(k) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management, factory, mine, farm, or other fixed place of business, but does not include an agency in the other territory unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or regularly fills orders on its behalf from a stock of goods or merchandise in that other territory.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such and receiving remuneration in respect of those dealings at a rate not less than that customary in the class of business in question.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) The terms "New Zealand tax" and "Presidential tax", as used in the present Arrangement, do not include any tax payable in New Zealand or the Presidency which represents a penalty imposed under the law of New Zealand or the Presidency relating to the taxes which are the subject of the present Arrangement.

(3) In the application of the provisions of this Arrangement by New Zealand or the Presidency, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of New Zealand, or, as the case may be, the Presidency, relating to the taxes which are the subject of this Arrangement.

**3.** (1) The industrial or commercial profits of a New Zealand enterprise shall not be subject to Presidential tax unless the enterprise is engaged in trade or business in the Presidency through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Presidency, but only on so much of them as is attributable to that permanent establishment:

Provided that nothing in this sub-paragraph shall affect any provisions of the law of New Zealand regarding the taxation of income from the business of insurance.

(2) The industrial or commercial profits of a Presidential enterprise shall not be subject to New Zealand tax unless the enterprise is engaged in trade or business in New Zealand through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by New Zealand, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other territory.

If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in this sub-paragraph shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in this sub-paragraph.

(4) Profits derived by an enterprise of one of the territories from sales, under contracts concluded in that territory, of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other territory, and transmitted by him to the enterprise for acceptance.

(5) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory.

#### 4. (1) Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control, or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

(c) in either case conditions are operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length with one another,

then, if by reason of those conditions profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits

of that enterprise the profits which would have accrued to it if it were an independent enterprise and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the territories under sub-paragraph (1) of this paragraph shall be deemed to be income derived from sources in that territory and shall be taxed accordingly.

(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of sub-paragraph (1) of this paragraph, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory: Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that sub-paragraph.

**5.** Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

**6.** (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company: Provided that dividends paid by a company resident in New Zealand to a person who is resident in the Presidency may be included in that person's total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person other than such dividends.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits, or income so derived.

**7.** (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent,

design, secret process or formula, trade mark, or, other like property, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of timber or other natural resources or rents or royalties in respect of motion picture films.

**8.** (1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory if the individual is not ordinarily resident in that other territory or is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for the purposes of profit.

**9.** (1) An individual who is a resident of the Presidency shall be exempt from New Zealand tax on profits or remuneration in respect of personal (including professional) services performed within New Zealand in any year of assessment if—

(a) he is present within New Zealand for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a person resident in the Presidency, and

(c) the profits or remuneration are subject to Presidential tax.

(2) An individual who is a resident of New Zealand shall be exempt from Presidential tax on profits or remuneration in respect of personal (including professional) services performed within the Presidency in any year of assessment if—

(a) he is present within the Presidency for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a person resident in New Zealand, and

(c) the profits or remuneration are subject to New Zealand tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

**10.** (1) Any pension or annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and liable to tax in that other territory, in respect thereof, shall be exempt from tax in the first-mentioned territory.

(2) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

**11.** A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at



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a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

**12.** A student or business or trade apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

**13.** Income of a person who is a resident of the Presidency (other than dividends paid by a company resident in New Zealand) which is exempt from New Zealand tax under any provision of the present Arrangement shall not be included in that person's total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person which is assessable to New Zealand tax.

**14.** (1) Subject to the provisions of the law of the Presidency regarding the allowance as a credit against Presidential tax of tax payable in a territory outside the Presidency, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any Presidential tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in New Zealand, the credit shall take into account the New Zealand tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in the profits, the New Zealand tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

For the purposes of this paragraph any amount which is included in a person's taxable income under any provision of the law of New Zealand regarding the taxation of income from the business of insurance shall be deemed to be derived from sources in New Zealand.

(2) Where New Zealand tax is payable in respect of income derived from sources in the Presidency by a person who is a resident of New Zealand, being income in respect of which Presidential tax is payable, whether directly or by deduction, the Presidential tax so payable (reduced by the amount of any relief or repayment attributable to that income to which that person is entitled under the law of the Presidency) shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in New Zealand, be allowed as a credit against the New Zealand tax (other than the social security charge) payable in respect of that income:

Provided that where the income is a dividend paid by a company resident in the Presidency the credit shall be allowed only if the recipient elects for the purposes of this sub-paragraph to have the amount of such dividend together with the Presidential tax (as so reduced) included in his assessable income for the purposes of New Zealand tax.

Where such income is an ordinary dividend paid by a company resident in the Presidency, the credit shall take into account (in addition to any Presidential income tax appropriate to the dividend) the Presidential profits tax payable by the company in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(3) For the purposes of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

**15.** (1) The taxation authorities of New Zealand and the Presidency shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment or collection of, or the determination of appeals in relation to the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this paragraph, the term "taxation authorities" means in the case of New Zealand the Commissioner of Taxes or his authorized representative; and in the case of the Presidency the Income Tax Commissioners or their authorized representative.

**16.** This Arrangement shall be deemed to have come into force on the 11th day of August, 1951 and shall have effect—

(a) in New Zealand, as respects income tax for the year of assessment beginning on the first day of April, 1951, and subsequent years; as respects social security charge on salaries and wages as from the first day of April, 1951; and as regards social security charge on income other than salaries and wages as from the first day of April, 1950, and subsequent years;

(b) in the Presidency, as respects income tax for the year of assessment beginning on the first day of January, 1951, and subsequent years.

S.R.O. 13/1956.

THE INCOME TAX (DOUBLE TAXATION RELIEF) (NORWAY) ORDER,  
MADE MAY 17, 1956, UNDER SECTION 55 OF THE INCOME TAX  
ORDINANCE.

Short title.

**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (Norway) Order.

Declaration.

**2.** It is hereby declared—

- (a) that the arrangements specified in the First Schedule, as modified by the provisions of the Second Schedule, have been made with the Government of Norway;
- (b) that it is expedient that those arrangements shall have effect.

FIRST SCHEDULE.

Agreement between the Government of the United Kingdom and the Norwegian Government for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Norway,

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:—

ARTICLE I.

**1.** (1) The taxes which are the subject of the present Convention are—

(a) In Norway:

The national income tax, including the national defence tax on income, the communal income tax, the old age pension tax, the war pension tax, and the seamen's tax, and, for the purposes of Article XIX the national property tax, including the national defence tax on property (hereinafter referred to as "Norwegian tax");

(b) In the United Kingdom of Great Britain and Northern Ireland:

The income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax").

The income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax").

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Norway or the United Kingdom subsequently to the date of signature of the present Convention.

## ARTICLE II.

1. In the present Convention, unless the context otherwise requires—

(a) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;

(b) The term "Norway" means the Kingdom of Norway, excluding Spitsbergen and Bear Island and Jan Mayen and the Norwegian dependencies outside Europe;

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Norway, as the context requires;

(d) The term "tax" means United Kingdom tax or Norwegian tax, as the context requires;

(e) The term "person" includes any body of persons, corporate or not corporate;

(f) The term "company" means any body corporate;

(g) The terms "resident of the United Kingdom" and "resident of Norway" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Norway for the purposes of Norwegian tax, and any person who is resident in Norway for the purposes of Norwegian tax and not resident in the United Kingdom for the purposes of United Kingdom tax; a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Norway if its business is managed and controlled in Norway;

(h) The terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of Norway, as the context requires;

(i) The terms "United Kingdom enterprise" and "Norwegian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Norway, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Norwegian enterprise, as the context requires;

(j) The term "industrial or commercial profits" includes rents or royalties in respect of cinematograph films;

(k) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, but does not include an agency unless the agent has,

and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—

- (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona-fide broker or general commission agent acting in the ordinary course of his business as such;
- (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
- (iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

**2.** Where under the present Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

**3.** In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III.

**1.** The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Norwegian tax unless the enterprise carries on a trade or business in Norway through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Norway, but only on so much of them as is attributable to that permanent establishment.

**2.** The industrial or commercial profits of a Norwegian enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

**3.** Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be

attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from the sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV.

Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control, or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V.

1. Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

#### ARTICLE VI.

1. (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Norway, who is subject to tax in Norway in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom sur-tax.

(b) Norwegian tax on dividends paid by a company which is a resident of Norway to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Norway

through a permanent establishment situated therein, shall not exceed 5 per cent.:

Provided that, where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50 per cent. of the entire voting power of the company paying the dividends, the dividends shall be exempt from Norwegian tax.

**2.** Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VII.

**1.** Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

**2.** In this Article—

(a) The term "interest" includes interest on bonds, securities, notes, debentures or on any other form of indebtedness;

(b) The term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

**3.** Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.

**4.** Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE VIII.

**1.** Where under the provisions of the present Convention a resident of the United Kingdom is exempt or entitled to relief from Norwegian tax, similar exemption or relief shall be applied to the undivided estates of deceased persons insofar as one or more of the beneficiaries is a resident of the United Kingdom.

**2.** Norwegian tax on the undivided estate of a deceased person shall, insofar as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under article XVI.

## ARTICLE IX.

1. Remuneration, including pensions, paid by, or out of funds created by, one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.

2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for the purposes of profit.

## ARTICLE X.

1. An individual who is a resident of the United Kingdom shall be exempt from Norwegian tax on profits or remuneration in respect of personal (including professional) services performed within Norway in any year of assessment if—

(a) he is present within Norway for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of a resident of the United Kingdom; and

(c) the profits or remuneration are subject to United Kingdom tax.

2. An individual who is a resident of Norway shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a resident of Norway, and

(c) the profits or remuneration are subject to Norwegian tax.

3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artistes, musicians and athletes.

## ARTICLE XI.

A resident of one of the territories shall be exempt from tax in the other territory in respect of remuneration for services performed on ships or aircraft operating outside the other territory.

## ARTICLE XII.

1. Any pension, (other than a pension of the kind referred to in paragraph 1 of Article IX) and any annuity, derived from sources within Norway by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Norwegian tax.



**2.** Any pension, (other than a pension of the kind referred to in paragraph 1 of Article IX) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Norway and subject to Norwegian tax in respect thereof, shall be exempt from United Kingdom tax.

**3.** The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### ARTICLE XIII.

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XIV.

A student or apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him from abroad for the purposes of his maintenance, education or training.

#### ARTICLE XV.

**1.** Individuals who are residents of Norway shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

**2.** Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Norwegian tax as Norwegian nationals not resident in Norway.

#### ARTICLE XVI.

**1.** Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Norwegian tax payable, whether directly or by deduction, in respect of income from sources within Norway shall be allowed as a credit against any United Kingdom tax payable in respect of that income.

Where such income is an ordinary dividend paid by a company resident in Norway, the credit shall take into account (in addition to any Norwegian tax appropriate to the dividend) the Norwegian tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Norwegian tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate:

Provided for the purposes of this paragraph of this Article, the credit to be allowed for Norwegian communal income tax shall not exceed one-half of the said communal income tax.

**2.** Where United Kingdom tax is payable, whether directly or by deduction, in respect of income from sources within the United Kingdom, and that income is chargeable also to Norwegian tax, the Norwegian tax payable by the person entitled to such income on his total income chargeable to Norwegian tax shall be reduced by an amount which bears the same proportion to that Norwegian tax as the income from sources within the United Kingdom bears to the said total income: Provided that the Norwegian Ministry of Finance and Customs may decide that the deduction shall not exceed the amount of the United Kingdom tax.

Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the deduction, in the event that it is restricted to the amount of the United Kingdom tax, shall take into account (in addition to the United Kingdom tax appropriate to the dividend) the United Kingdom profits tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

**3.** Where income is derived from sources outside both the United Kingdom and Norway by a person who is resident in the United Kingdom for the purposes of United Kingdom tax and also resident in Norway for the purposes of Norwegian tax, the income may be taxed in both countries (subject to any Convention which may exist between either of the Contracting Parties and the territory or territories from which the income is derived). A credit shall be allowed in accordance with paragraph 1 of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Norwegian tax, whichever is the less, which such person's income from sources within the United Kingdom bears to the sum of his income from sources within the United Kingdom and his income from sources within Norway; and a deduction shall be allowed in accordance with paragraph 2 of this Article against any Norwegian tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Norwegian tax, whichever is the less, which such person's income from sources within Norway bears to the sum of his income from sources within the United Kingdom and his income from sources within Norway.

**4.** For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, except that the remuneration of a director of a company, shall be deemed to be income from sources within the territory in which the company is resident, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVII.

**1.** The taxation authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective

taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court) concerned with the assessment, determination and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; in the case of Norway, the Ministry of Finance and Customs; and, in the case of any territory to which the present Convention is extended under Article XX, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XVIII.

The Agreement of 18th December, 1924 (\*), between Great Britain and Norway for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping, and the Agreement of 21st December, 1938 (†), between the United Kingdom and Norway for the reciprocal exemption from taxes in certain cases of profits arising through agencies, shall not have effect—

(a) in Norway, for any period for which the present Convention has effect in that country;

(b) in the United Kingdom, in relation to any tax for any period for which the present Convention has effect as respects that tax.

#### ARTICLE XIX.

1. The nationals of one of the Contracting Parties shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

2. The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits or capital.

3. The income, profits or capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned

(\*) S.R. & O. 1925 (No. 103) p. 600.

(†) S.R. & O. 1939 (No. 1319) II, p. 1734.

territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits and capital.

4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the Contracting Parties to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to its own nationals.

5. In this Article the term "nationals" means—

(a) in relation to Norway, all Norwegian citizens and all judicial persons domiciled in Norway;

(b) in relation to the United Kingdom, all British subjects and British-protected persons residing in the United Kingdom or in any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships and associations deriving their status as such from the law in force in any British territory to which the present Convention applies.

6. In this Article the term "taxation" means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XX.

1. The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

2. The termination in respect of Norway or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

#### ARTICLE XXI.

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at Oslo as soon as possible.

2. The present Convention shall enter into force upon the exchange of ratifications and the foregoing provisions thereof shall have effect—

(a) in the United Kingdom :

as respects income tax for any year of assessment beginning on or after 6th April, 1950;

as respects surtax for any year of assessment beginning on or after 6th April, 1949; and

as respects profits tax in respect of the following profits—

- (i) profits arising in any chargeable accounting period beginning on or after 1st April, 1950;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after 6th April, 1950;

(b) In Norway:

for the taxable years beginning on or after 1st January, 1950.

#### ARTICLE XXII.

The present Convention shall continue indefinitely but either of the Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1954, give to the other Contracting Party, through diplomatic channels, written notice of termination provided that such notice of termination may be given in any year before 1954 if there should be any important change in the laws of the other Contracting Party affecting the application of Article XVI. In such event, the present Convention shall cease to be effective—

(a) In the United Kingdom:

as respects income tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

as respects surtax, for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and

as respects profits tax in respect of the following profits—

- (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

(b) In Norway:

for the taxable years beginning on or after 1st January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, being duly authorized by their respective Governments, have signed the present Convention and have affixed thereto their seals.

Done at London, in duplicate, in the English and Norwegian languages, both texts being equally authoritative, on the 2nd day of May, 1951.

[L.S.]

HERBERT MORRISON.

[L.S.]

P. PREBENSEN.

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## SECOND SCHEDULE.

**1. APPLICATION.** (a) The provisions of the Convention incorporated in the First Schedule shall apply as modified below

- (i) as if the contracting parties were the Presidency and the Government of Norway; as if the tax concerned in the case of the Presidency were the tax imposed by the Income Tax Ordinance, 1946, as amended;
- (ii) as if references to the date of signature were references to the 18th day of May, 1955;

(b) The extension shall have effect in the Presidency as respects tax for the year of assessment 1955 and for subsequent years of assessment, and will have effect in Norway as respects Norwegian tax for the taxable years beginning on or after 1st January, 1954.

(c) The extension shall continue in effect indefinitely but may be terminated as respects the Presidency by written notice of termination given on or before the 30th of June in any calendar year not earlier than the year 1957 by either of the Contracting Parties to the Convention to the other Contracting Party through the diplomatic channel and in such event the extension shall cease to have effect in the Presidency as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, and will cease to have effect in Norway as respects Norwegian tax for the taxable years beginning on or after 1st January in the calendar year in which the notice is given.

**2. MODIFICATIONS.** (a) In paragraph 1 of Article VI of the Convention the words "shall be exempt from United Kingdom surtax" shall be understood for the purposes of this extension as though they read "shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company."

- (b) (i) In Article VII all references to interest shall be deemed to be deleted; and
- (ii) in paragraph 2 of Article XVI references to income (except in the phrase "total income") shall be deemed not to include interest.

S.R.O.3/1975

THE INCOME TAX (DOUBLE TAXATION RELIEF) (KINGDOM OF SWEDEN) ORDER MADE JANUARY 21, 1975 UNDER SECTION 55 OF THE INCOME TAX ORDINANCE.

[14th February, 1961]

Short title.

1. This Order may be cited as the Income Tax (Double Taxation Relief) (Kingdom of Sweden) Order.

Declaration.

2. It is hereby declared that -

- (a) the arrangements specified in the First Schedule, as modified by the provisions of the Second Schedule, have been made with the Government of the Kingdom of Sweden;
- (b) it is expedient that those arrangements should have effect.

FIRST SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Sweden:

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

ARTICLE 1

(1) The taxes which are the subject of the present Convention are:—

(a) In Sweden:

- (i) the State income tax, including sailors tax and coupon tax;

- (ii) the tax on the undistributed profits of companies;
- (iii) the tax on public entertainers;
- (iv) the communal income tax; and
- (v) the State capital tax (hereinafter referred to as "Swedish tax").

(b) In the United Kingdom of Great Britain and Northern Ireland:

- (i) the income tax (including surtax); and
- (ii) the profits tax (hereinafter referred to as "United Kingdom tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

## ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;

(b) the terms "one of the territories" and "the other territory" mean the United Kingdom or Sweden, as the context requires;

(c) the term "taxation authorities" means, in the case of Sweden, the Minister of Finance or his authorised representative; in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which this Convention is extended under Article XXVIII, the competent authority for the administration in such territory of the taxes to which this Convention applies;

(d) the term "tax" means United Kingdom tax or Swedish tax, as the context requires;

(e) the term "person" includes any body of persons, corporate or not corporate;

(f) the term "company" means any body corporate;

(g) (i) the terms "resident of the United Kingdom" and "resident of Sweden" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and any person who is resident in Sweden for the purposes of Swedish tax; but

(ii) where by reason of the provisions of sub-paragraph (g) (i) above an individual is a resident of both territories, then this case shall be solved in accordance with the following rules:

(aa) he shall be deemed to be a resident of the territory in which



he has a permanent home available to him. If he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);

(bb) If the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

(cc) If he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;

(dd) If he is a national of both territories or of neither of them, the taxation authorities of the territories shall determine the question by mutual agreement;

(iii) where by reason of the provisions of sub-paragraph (g) (i) above a legal person is a resident of both territories, then it shall be deemed to be a resident of the territory in which its place of effective management is situated. The same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons;

(h) the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of Sweden, as the context requires;

(i) the terms "United Kingdom enterprise" and "Swedish enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Sweden, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Swedish enterprise, as the context requires;

(j) the term "industrial or commercial profits" includes rents or royalties in respect of cinematograph including television films;

(k) (i) the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(ii) a permanent establishment shall include especially:

(aa) a place of management;

(bb) a branch;

- 
- (cc) an office;
  - (dd) a factory;
  - (ee) a workshop;
  - (ff) a mine, quarry or other place of extraction of natural resources;
  - (gg) a building site or construction or assembly project which exists for more than twelve months;
- (iii) the term "permanent establishment" shall not be deemed to include:
- (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise;
- (iv) a person acting in one of the territories on behalf of an enterprise of the other territory — other than an agent of an independent status to whom sub-paragraph (k) (v) applies — shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
- (v) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business;
- (vi) the fact that a company which is a resident of one of the territories controls or is controlled by a company which is a resident

of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other;

(1) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

(2) Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

(3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Sweden, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Swedish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory.

(5) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

If undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises:—

(a) the industrial and commercial profits of a Swedish enterprise shall be charged to United Kingdom profits tax only at that lower rate; and

(b) where a company which is a resident of Sweden controls, directly or indirectly, not less than 50 per cent. of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom profits tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

#### ARTICLE VI

Income from the operation of ships or aircraft in international traffic shall be taxable only in the territory in which the place of effective management of the enterprise is situated.

#### ARTICLE VII

(1) (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Sweden, who is subject to a tax in Sweden in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

(b) Dividends paid by a company which is a resident of Sweden to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Sweden through a permanent establishment situated therein, shall be exempt from Swedish coupon tax.

(2) Dividends paid by a company which is a resident of the United Kingdom to a company which is a resident of Sweden shall be exempt from Swedish tax. This exemption shall not apply unless in accordance with the laws of Sweden the dividends would have been exempt from Swedish tax if the first-mentioned company had been a resident of Sweden and not a resident of the United Kingdom.

(3) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VIII

(1) Any interest derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in that first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

(2) In this Article, the term "interest" includes interest on bonds, securities, notes, debentures or any other form of indebtedness.

(3) Where any interest exceeds a fair and reasonable consideration in respect of the indebtedness for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest as represents such fair and reasonable consideration.

#### ARTICLE IX

(1) Any royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

(2) In this Article, the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include any royalty or any other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources or in respect of cinematograph including television films.

(3) Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.

(4) Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE X

(1) Income from immovable property may be taxed in the territory in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with the laws of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, sources and other natural resources: ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply to income derived from the direct use or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

(4) The provisions of paragraphs (1) to (3) of this Article shall also apply to the income from immovable property of any enterprises other than agricultural or forestry enterprises and to income from immovable property used for the performance of professional services.

#### ARTICLE XI

(1) Where under the provisions of this Convention a resident of the United Kingdom is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estate of a deceased person in so far as one or more of the beneficiaries is a resident of the United Kingdom.

(2) Swedish tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XXIII.

#### ARTICLE XII

Notwithstanding anything contained in Article X, a resident of one of the territories who does not carry on a trade or business in the other territory through a

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permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

#### ARTICLE XIII

(1) Subject to the provisions of paragraph (2) of this Article remuneration or pensions paid by, or out of funds created by, one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party.

(2) Where the individual is a national of the latter Contracting Party without being also a national of the first-mentioned Party paragraph (1) of this Article shall not apply, but the remuneration or pension shall for the purposes of Article XXIII be deemed to be income from a source within the territory of the first-mentioned Party.

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

#### ARTICLE XIV

(1) Any pension (other than a pension of the kind referred to in paragraph (1) or (2) of Article XIII) and any annuity, derived from sources within Sweden by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Swedish tax.

(2) Any pension (other than a pension of the kind referred to in paragraph (1) or (2) of Article XIII) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Sweden and subject to Swedish tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

#### ARTICLE XV

Income derived by a resident of one of the territories in respect of professional services or other independent activities of a similar character shall be subjected to tax only in that territory unless he has a fixed base regularly available to him in the other territory for the purpose of performing his activities. If he has such a fixed base such part of that income as is attributable to that base may be taxed in that other territory.

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**ARTICLE XVI**

(1) Subject to the provisions of Articles XIII, XIV and XVIII, salaries, wages and other similar remuneration derived by a resident of one of the territories in respect of an employment shall be subjected to tax only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of one of the territories in respect of an employment exercised in the other territory shall be subjected to tax only in the first-mentioned territory if:

(a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(b) the remuneration is paid by or on behalf of an employer who is not a resident of the other territory, and

(c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other territory.

(3) In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment, and as if references to employers were references to the company.

(4) Notwithstanding the preceding provisions of this Article remuneration for personal services performed aboard a ship or aircraft in international traffic may be taxed in the territory in which the place of effective management of the enterprise is situated.

**ARTICLE XVII**

Notwithstanding anything contained in this Convention, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the territory in which these activities are exercised.

**ARTICLE XVIII**

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university college, school, or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

**ARTICLE XIX**

(1) Payments which a student or business apprentice from one of the territories who is present in the other territory solely for the purpose of his



education or training receives for the purpose of his maintenance, education, or training, shall not be taxed in that other territory, provided that such payments are made to him from sources outside that other territory.

(2) A student at a university or other establishment for higher education in one of the territories who for a period or periods not exceeding in the aggregate 100 days during the year of assessment is employed in the other territory in order to gain practical experience required for his education shall be exempt from tax in that other territory on his remuneration from such employment.

## ARTICLE XX

Any income not dealt with in the foregoing provisions derived by a resident of one of the territories who is subject to tax there in respect thereof shall be subjected to tax only in that territory.

## ARTICLE XXI

Where any capital tax is imposed by one or other or both of the Contracting Parties the following provisions shall apply:

(a) Capital represented by immovable property, as defined in paragraph (2) of Article X, may be taxed in the territory in which such property is situated.

(b) Subject to the provisions of sub-paragraph (a) of this Article, capital represented by assets forming part of the business property employed in a permanent establishment of an enterprise, or by assets pertaining to a fixed base used for the performance of professional services, may be taxed in the territory in which the permanent establishment or fixed base is situated.

(c) Ships and aircraft operated in international traffic and assets, other than immovable property, pertaining to the operation of such ships and aircraft, may be subjected to capital tax only in the territory in which the place of effective management of the enterprise is situated.

(d) All other elements of capital of a resident of one of the territories may be subjected to capital tax only in that territory.

## ARTICLE XXII

(1) Individuals who are residents of Sweden shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swedish tax as those to which Swedish nationals not resident in Sweden may be entitled.

## ARTICLE XXIII

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Sweden shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid in by a company which is a resident of Sweden the credit shall take into account (in addition to any Swedish tax appropriate to the dividend) the Swedish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Swedish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate. For the purpose of this paragraph the term Swedish tax shall not include any capital tax.

(2) Income from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swedish tax; provided that where such income is a dividend paid by a company being a resident of the United Kingdom to a resident of Sweden, not being a company which is exempt from Swedish tax according to the provisions of paragraph (2) of Article VII, Swedish tax shall be charged on the amount of the dividend after deduction of United Kingdom income tax, but the amount of Swedish tax chargeable shall be reduced by a sum equal to 20 per cent. of the amount of the dividend so charged.

(3) If, in accordance with Article XXI, capital belonging to a resident of Sweden may be taxed in the United Kingdom, such capital shall be exempt from Swedish tax.

(4) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall, unless paragraph 2 of Article XIII applies, be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

(5) The graduated rate of Swedish tax to be imposed on residents of Sweden may be calculated as though income or capital exempted under this Convention were included in the amount of the total income or capital.

## ARTICLE XXIV

The taxation authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the

taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

#### ARTICLE XXV

The taxation authorities of the Contracting Parties may communicate with each other directly for the purpose of giving effect to the provisions of this Convention and for resolving any difficulty or doubt as to the application or interpretation of the Convention.

#### ARTICLE XXVI

(1) The nationals of one of the Contracting Parties shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which the nationals of the latter Party in the same circumstances are or may be subjected.

(2) The term "nationals" means-

(a) in relation to Sweden, all Swedish subjects and all legal persons, partnerships and associations deriving their status as such from the law in force in Sweden;

(b) in relation to the United Kingdom, all British subjects and British protected persons

(i) residing in the United Kingdom or any territory to which the present Convention is extended under Article XXVIII, or

(ii) deriving their status as such from connexion with the United Kingdom or any territory to which the present Convention is extended under Article XXVIII.

and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom or in any territory to which the Convention is extended under Article XVIII.

(3) The taxation on a permanent establishment which an enterprise of one of the territories has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. This provision shall not be construed as obliging one of the Contracting Parties to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(4) Enterprises of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned territory are or may be subjected.

(5) In this Article the term "taxation" means taxes of every kind and description.

#### ARTICLE XXVII

The following agreements between the United Kingdom and Sweden shall not have effect for any period for which the present Convention has effect, that is to say—

(a) the agreement dated 19th December, 1924, for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping; (1)

(b) the agreement dated 6th July, 1931, for the reciprocal exemption from taxes in certain cases of profits arising through agencies. (2)

#### ARTICLE XXVIII

(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose foreign relations the United Kingdom is responsible, and which imposes taxes substantially similar in character to those which are the subject of this Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

(2) The termination in respect of Sweden or the United Kingdom of this Convention under Article XXX shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of this Convention to any territory to which the Convention has been extended under this Article.

#### ARTICLE XXIX

(1) The present Convention shall be ratified by the Contracting Parties in accordance with their respective constitutional and legal requirements.

(2) The instruments of ratification shall be exchanged at Stockholm as soon as possible.

(3) Upon the exchange of ratification the present Convention shall enter into force (3), and its provisions shall have effect—

(a) in Sweden—

(i) in respect of the State income tax and the communal income tax on income which is assessed in or after the calendar year

(1) "Treaty Series No.11 (1925)", Cmd. 2322.

(2) "Treaty Series No.31 (1931)", Cmd. 3923.

(3) The Convention entered into force on February 14, 1961.

beginning on 1st January, 1961, being income for which preliminary tax is payable during the period 1st March, 1960, to 28th February, 1961, or any succeeding period;

- (ii) in respect of coupon tax on dividends payable on or after 1st January, 1960;
- (iii) in respect of the tax on public entertainers which is levied on or after 1st January, 1960;
- (iv) in respect of sailors tax on income payable on or after 1st January, 1960; and
- (v) in respect of the State capital tax which is assessed in or after the calendar year beginning on 1st January, 1961;

(b) in the United Kingdom—

as respects income tax for any year of assessment beginning on or after 6th April, 1960;

as respects surtax for any year of assessment beginning on or after 6th April 1959; and

as respects profits tax in respect of the following profits:

- (i) profits arising in any chargeable accounting period beginning on or after 1st April, 1960;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is or but for the present Convention would be, chargeable for any year of assessment beginning on or after 6th April, 1960.

(4) The Convention between Sweden and the United Kingdom of Great Britain and Northern Ireland, signed at London on the 30th of March, 1949, (4) shall terminate and cease to be effective as respects taxes to which the present Convention in accordance with paragraph (3) above applies: Provided that the said Convention shall still apply as between Sweden and those territories to which that Convention has been extended under Article XXIII thereof.

(5) The understanding between the Government of the United Kingdom and the Government of Sweden embodied in the Exchange of Notes of 18th February, 1955, (5) shall not apply as respects income earned after the 31st of December, 1959.

(4) "Treaty Series No.63 (1949)", Cmd. 7800.

(5) "Treaty Series No.26 (1955)", Cmd. 9459.

## ARTICLE XXX

The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before 30th June in any calendar year not earlier than the year 1964, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective—

(a) in Sweden—

- (i) in respect of the State income tax and the communal income tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which such notice is given;
- (ii) in respect of coupon tax on dividends payable on or after 1st January in the calendar year next following that in which such notice is given;
- (iii) in respect of the tax on public entertainers which is levied on or after 1st January in the calendar year next following that in which such notice is given;
- (iv) in respect of sailors tax on income payable on or after 1st January in the calendar year next following that in which such notice is given; and
- (v) in respect of the State capital tax assessed in or after the second calendar year following that in which such notice is given;

(b) in the United Kingdom—

as respects income tax for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

as respects surtax for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and as respects profits tax in respect of the following profits:

- (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Convention.

Done in duplicate at London, this 28th day of July, 1960, in the English and Swedish languages, both texts being equally authoritative.

For the Government of the United  
Kingdom of Great Britain and  
Northern Ireland:

For the Government of  
the Kingdom of  
Sweden:

DAVID ORMSBY GORE.

GUNNAR HAGGLOF.

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## SECOND SCHEDULE

Application.

(1) The provisions of the Convention in the First Schedule shall apply as modified below as if the—

(a) Contracting Parties were the Government of Sweden and Government of the Virgin Islands;

(b) term “United Kingdom” (except where the context otherwise requires) means the Virgin Islands;

(c) taxes concerned in the case of the Virgin Islands were Income Tax in the Virgin Islands; and

(d) reference to “the date of signature of the present Convention” in paragraph (2) of Article 1 were a reference to 14th February, 1961.

(2) The present extension shall have effect—

(a) in Sweden—

(i) in respect of the State income tax and the communal income tax on income which is assessed on or after the calendar year beginning on 1st January, 1973, being income for which preliminary tax is payable during the period 1st March, 1972, to 28th February, 1973, or any succeeding period;

(ii) in respect of coupon tax on dividends payable on or after 1st January, 1972;

(iii) in respect of the tax on public entertainers which is levied on or after 1st January, 1972;

(iv) in respect of sailors’ tax on income payable on or after 1st January, 1972; and

(v) in respect of the State capital tax which is assessed in or after the calendar year beginning on 1st January, 1973;

(b) in the Virgin Islands as respects tax for the year of assessment beginning 1st January, 1972 and for subsequent years of assessment.

(3) Nothing in paragraph 2 above shall be construed as overriding the time limitation, prescribed by the law of Sweden or of the Virgin Islands for the collection of the tax amount and the refunding connected therewith.

(4) The Government of the United Kingdom shall inform the Swedish Government in writing through the diplomatic channel when the necessary measures as indicated in paragraph 2 have been completed in the Virgin Islands.

(5) Either the Government of the United Kingdom or the Government of Sweden, may on or before the 30th day of June in any calendar year give to the other Government through the diplomatic channel written notice of termination in relation to the Virgin Islands and in such event the present extension shall cease to have effect:—

(a) in Sweden as respects income for the taxable years beginning the first day of January in the calendar year next following that in which notice is given;

(b) in the Virgin Islands as respects taxes charged for any year of assessment beginning on or after the first day of January in the calendar year next following that in which notice is given.

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S.R.O.. 20/1972

THE INCOME TAX (DOUBLE TAXATION RELIEF) (SWITZERLAND)  
ORDER, MADE MARCH 13, 1972 UNDER SECTION 55 OF THE  
INCOME TAX ORDINANCE.

[1st January, 1961]

Short title.

**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (Switzerland) Order,

Declaration.

**2.** It is hereby declared that —

(a) the arrangements specified in the First Schedule, as modified by the provisions of the Second Schedule, have been made with the Swiss Federal Council;

(b) it is expedient that those arrangements should have effect.



## FIRST SCHEDULE

## CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

London, September 30, 1954

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council,

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income,

Have appointed for that purpose as their respective Plenipotentiaries:

The Government of the United Kingdom of Great Britain and Northern Ireland:

Alfred Douglas Dodds-Parker, Esquire, Parliamentary  
Under-Secretary of State for Foreign Affairs;

The Swiss Federal Council:

Monsieur Erwin Bernath, Swiss Charge d'Affaires ad interim in London;

who, having communicated to one another their full powers, found in good and due form, have agreed as follows:

## ARTICLE 1

(1) The taxes which are the subject of the present Convention are —

(a) In the United Kingdom:

The income tax (including surtax), the profits tax and the excess profits levy (hereinafter referred to as "United Kingdom tax");

(b) In Switzerland:

The federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, &c.), but not including the Federal Coupon tax except where expressly mentioned (hereinafter referred to as "Swiss tax").

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Switzerland subsequently to the date of signature of the present Convention.

## ARTICLE II

(1) In the present Convention, unless the context otherwise requires—

(a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;

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- (b) The term "Switzerland" means the Swiss Confederation;
- (c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Switzerland, as the context requires;
- (d) The term "tax" means United Kingdom tax or Swiss tax, as the context requires;
- (e) The term "person" includes any individual, company, unincorporated body of persons, and any other entity with or without juridical personality;
- (f) the term "company" means in relation to the United Kingdom any body corporate, and in relation to Switzerland any entity with juridical personality;
- (g) The term "resident of the United Kingdom" means:
- (i) any company or partnership whose business is managed and controlled in the United Kingdom;
  - (ii) any other person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax;
- (h) The term "resident of Switzerland" means:—
- (i) any company or partnership ("societe simple," "societe en nom collectif" or "societe en commandite") created or organised under Swiss law, if its business is not managed and controlled in the United Kingdom;
  - (ii) any other person who is resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax and not resident in the United Kingdom for the purposes of United Kingdom tax;
- (i) The terms "resident of one of the territories" and "resident of the other territory" means a resident of the United Kingdom or a resident of Switzerland as the context requires;
- (j) The terms "United Kingdom enterprise" and "Swiss enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Switzerland, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Swiss enterprise, as the context requires;
- (k) The term "permanent establishment" means a branch, management, office, factory, workshop or other fixed place of business, and a farm, mine, quarry or other place of natural resources subject to exploitation. It also includes a place where building construction is carried on by contract for

a period of at least one year, but does not include any agency unless the agent has and habitually exercises a general authority to negotiate and conclude contracts on behalf of an enterprise of one of the territories. In this connection—

- (i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker, general commission agent or other independent agent acting in the ordinary course of his business as such;
- (ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
- (iii) The fact that an enterprise of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of the enterprise of the former territory;

(1) The term “industrial or commercial profits” includes manufacturing, mercantile, mining, farming, financial and insurance profits, and rents and royalties in respect of cinematograph films, but does not include income in the form of dividends, interest or royalties (other than cinematograph royalties) except any such income which, under the laws of one of the territories and in accordance with Article III of the present Convention, is attributable to a permanent establishment situated therein;

(m) The term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of Switzerland, the Director of the Federal Tax Administration or his authorised representative; and in the case of any territory to which the present Convention is extended under Article XXI, the competent authority for the administration in such territory of the taxes to which the Convention applies.

(2) Where the present Convention provides that income from a source within Switzerland shall be exempt from, or entitled to a reduced rate of, tax in Switzerland if (with or without other conditions) it is subject to tax in the United Kingdom, and under the law in force in the United Kingdom the said income is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the exemption or reduction in rate to be allowed under the Convention in Switzerland shall apply only to so much of the income as is remitted to or received in the United Kingdom.

(3) Where under any provision of the present Convention a partnership is entitled to exemption from United Kingdom tax as a resident of Switzerland on any income, such a provision shall not be construed as restricting the right of the United Kingdom to charge any member of the partnership, being a person who is resident in the United Kingdom for the purposes of United Kingdom tax (whether or not he is also resident in Switzerland for the purposes of Swiss tax), to tax on his share of the income of the partnership; but any such income shall be deemed for the purpose of Article XV to be income from sources within Switzerland.

(4) Where under any provision of the present Convention an estate of a deceased person is entitled to exemption from United Kingdom tax as a resident of Switzerland on any income, such a provision shall not be construed as requiring the United Kingdom to grant exemption from United Kingdom tax in respect of such part of such income as goes to any heir of such estate who is not resident in Switzerland for the purposes of Swiss tax and whose share of such income is not subject to Swiss tax either in his hands or in the hands of the estate.

(5) In the application of the provisions of the present Convention by either Contracting Party any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that party relating to the taxes which are the subject of the Convention.

### ARTICLE III

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swiss tax unless the enterprise is engaged in trade or business in Switzerland through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Switzerland but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Swiss enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.

(5) No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

(6) In the determination of the industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment, including executive and general administrative expenses so applicable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

#### ARTICLE IV

Where—

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and, in either case, conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises, then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

#### ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft, including profits of that resident from the sale of tickets for passages by such ships or aircraft, shall be exempt from tax in the other territory.

#### ARTICLE VI

(1) Dividends (other than dividends which, under the laws of the United Kingdom and in accordance with Article III of this Convention, are attributable to a permanent establishment situated in the United Kingdom) paid by a company which is a resident of the United Kingdom to a resident of Switzerland who is subject to Swiss tax in respect thereof shall be exempt from United Kingdom surtax.

(2) The industrial and commercial profits of a Swiss enterprise engaged in trade or business through a permanent establishment in the United Kingdom shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom profits tax only at that lower rate.

(3) Where not less than 50 per cent. of the entire voting power of a company which is a resident of the United Kingdom is controlled, directly or indirectly, by a company which is a resident of Switzerland, the distributions by the former company to the latter company, and to any other company which is a resident of Switzerland and which beneficially owns not less than 10 per cent. of the entire share capital of the company paying the dividends, shall be left out of account in computing United Kingdom profits tax effectively chargeable on that company at the rate appropriate to distributed profits.

(4) (a) The Swiss anticipatory tax may be charged in respect of dividends paid by any company created under Swiss law to a resident of the United Kingdom, but, in the case of any such resident who is subject to United Kingdom tax in respect thereof, the rate of anticipatory tax shall be reduced in accordance with the following provisions of this paragraph (unless the dividends are, under the laws of Switzerland and in accordance with Article III of this Convention, attributable to a permanent establishment situated in Switzerland).

(b) If that resident is an individual whose effective rate of United Kingdom tax does not exceed 5 per cent., the anticipatory tax shall not be charged.

(c) If that resident is an individual whose effective rate of United Kingdom tax exceeds 5 per cent., the anticipatory tax shall be charged only at the rate which, when added to the rate of Federal coupon tax, equals that effective rate.

(d) If that resident is a company which controls, directly or indirectly, not less than 95 per cent. of the entire voting power of the company paying the dividends, the anticipatory tax shall be reduced by an amount equal to 20 per cent. of the dividend.

(e) If that resident is a company which controls, directly or indirectly, less than 95 per cent. but not less than 50 per cent. of the entire voting power of the company paying the dividends, the anticipatory tax shall be reduced by an amount equal to 10 per cent. of the dividend.

(f) If that resident is a company which beneficially owns not less than 10 per cent. of the entire share capital of the company paying the dividends, and the provisions of either sub-paragraph (d) or sub-paragraph (e) of this paragraph apply to some part of the dividends paid by the latter company, the anticipatory tax shall be reduced by an amount equal to 10 per cent. of the dividend.

(5) If at any time distributed profits of companies become chargeable to United Kingdom profits tax at a rate other than 20 per cent. above the rate at which undistributed profits are effectively chargeable to that tax, the competent authorities of the two Contracting Parties may consult together in order to determine whether it is necessary for this reason to amend sub-paragraphs (d), (e) and (f) of the preceding paragraph. After such consultation has taken place either of the Contracting Parties may give to the other Contracting Party through the diplomatic channel written notice of termination of the provisions of paragraph (3) and of sub-paragraphs (d), (e) and (f) of paragraph (4) of this Article, and, in such event, those provisions shall cease to be effective from the date on which the relevant change in the rates of United Kingdom profits tax took effect.

(6) Subject to the provisions of sub-paragraphs (a) of paragraph (4) of this Article, where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

## ARTICLE VII

(1) Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof, shall be exempt from tax in that first territory.

(2) In this Article—

(a) The term “interest” means interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or bonds secured on real property);

(b) The term “royalty” means any royalty or other amount paid as consideration for the right to use any copyright, artistic or scientific work, patent, model, design, secret process or formula, trademark, or other like property or right (including rentals and like payments for the use of industrial or commercial machinery or plant or scientific apparatus), but does not include any royalty or other amount paid in respect of the operation of mines, quarries or other natural resources.

(3) Any capital sum derived from sources within one of the territories from the sale of property or rights mentioned in sub-paragraph (b) of paragraph (2) of this Article by a resident of the other territory shall be exempt from tax in the first territory.

(4) Where there is a special relationship between debtor and creditor or both debtor and creditor have a special relationship with a third person or persons, and in consequence the amount paid is greater than would have been agreed upon if debtor and creditor had been at arm's length, the exemption provided by this Article shall not apply to the excess.

(5) Any interest or royalty exempted from United Kingdom tax by this Article shall be allowed as a deduction for profits tax and excess profits levy purposes from the profits or income of the person paying the interest or royalty, whatever the relationship between that person and the person receiving the interest or royalty may be.

(6) The exemption from tax in one of the territories provided for in this Article shall not apply to interest, royalties or capital sums which, under the laws of that territory and in accordance with Article III of this Convention, are attributable to a permanent establishment situated therein.

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**ARTICLE VIII**

(1) A resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer or exchange of capital assets (other than gains which, under the laws of that other territory and in accordance with Article III of this Convention, are attributable to a permanent establishment situated therein).

(2) In this Article, the term "capital assets" means any movable property, whether corporeal or incorporeal.

**ARTICLE IX**

(1) Income derived from real property situated in one of the territories by a resident of the other territory shall be subject to tax in accordance with the laws of the first-mentioned territory. Where the income is also subject to tax in the other territory, relief from double taxation shall be given in accordance with the provisions of Article XV.

(2) In this Article, the term "income from real property" means income of whatever nature derived from real property, including gains derived from the sale or exchange of such property, and it also includes royalties in respect of the operation of mines, quarries or other natural resources. It does not however include interest from mortgages or bonds secured on such property.

**ARTICLE X**

(1) Remuneration, including pensions, paid by, or out of funds created by, the Government of the United Kingdom to an individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from Swiss tax: provided that the exemption shall not apply to remuneration, other than a pension, paid to a Swiss citizen who is not also a British subject.

(2) Remuneration, including pensions, paid by, or out of funds created by, the Swiss Confederation or by any Swiss canton to an individual in respect of services rendered to Switzerland in the discharge of governmental functions shall be exempt from United Kingdom tax: provided that the exemption shall not apply to remuneration, other than a pension, paid to a British subject who is not also a Swiss citizen.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Contracting Party or by any Swiss canton for purposes of profit.

(4) The provisions of this Convention shall not be construed as denying or affecting in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to them.



## ARTICLE XI

(1) An individual who is a resident of the United Kingdom shall be exempt from Swiss tax on profits or remuneration in respect of personal (including professional) services performed within Switzerland in any year of assessment if—

(a) he is present within Switzerland for a period or periods not exceeding in the aggregate 183 days during that year, and

- (b) (i) in the case of a directorship or employment, the services are performed for or on behalf of a resident of the United Kingdom;  
(ii) in other cases, he has no office or other fixed place of business in Switzerland, and

(c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of Switzerland shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

- (b) (i) in the case of a directorship or employment, the services are performed for or on behalf of a resident of Switzerland;  
(ii) in other cases, he has no office or other fixed place of business in the United Kingdom; and

(c) the profits or remuneration are subject to Swiss tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture, radio or television artistes, musicians and athletes.

## ARTICLE XII

(1) Any pension (other than a pension of the kind referred to in Article X) and any annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and subject to tax in that other territory in respect thereof, shall be exempt from tax in the first territory.

(2) In this Article—

(a) The term “pension” means periodic payments made in consideration of past services or by way of compensation for injuries received;

(b) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.

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**ARTICLE XIII**

(1) A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

(2) A student or business apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons outside that other territory for the purposes of his maintenance, education or training.

**ARTICLE XIV**

(1) Individuals who are residents of Switzerland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swiss tax as Swiss nationals resident in the United Kingdom.

**ARTICLE XV**

(1) The laws of the Contracting Parties shall continue to govern the taxation of income arising in either of the territories, except where express provision to the contrary is made in the present Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

(2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Swiss tax payable, whether directly or by deduction, in respect of income from sources within Switzerland shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Switzerland to a company which controls, directly or indirectly, not less than 50 per cent. of the entire voting power of the former company, the credit shall take into account (in addition to any Swiss tax appropriate to the dividend) the Swiss tax payable by the former company in respect of its profits. For the purpose of this paragraph, the term "Swiss tax" shall include the Federal coupon tax, but shall not include the communal taxes.

(3) Income (other than dividends) from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swiss tax.

(4) In the case of a person (other than a company or partnership) who is resident in the United Kingdom for the purposes of United Kingdom tax and is also resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax, the provisions of paragraph (2) of this Article shall apply in relation to income which that person derives from sources within Switzerland, and the provisions of paragraph (3) of this Article shall apply in relation to income which that person derives from sources within the United Kingdom. If such person derives income from sources outside both the United Kingdom and Switzerland, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the Contracting Parties and the territory from which the income is derived) but the Swiss tax on so much of that income as is subjected to tax in both territories shall be limited to one-half of the tax on such income, and the United Kingdom tax on that income shall be reduced by a credit, in accordance with paragraph (2) of this Article, for the Swiss tax so computed.

(5) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, except that the remuneration of a director of a company shall be deemed to be income from sources within the territory in which the company is resident, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVI

(1) Where it is provided in this Convention that relief from tax in respect of any kind of income shall be allowed in the territory from which such income is derived, that provision shall not be construed as requiring that income to be paid without deduction of tax at source at the full rate. Where tax has been deducted at source from such income the taxation authorities of the territory in which relief from tax is required to be given shall, when the taxpayer in receipt of the income shows to their satisfaction and within the time limits prescribed in that territory that he is entitled to the relief, arrange for the appropriate repayment of tax.

(2) Where any income is exempted from tax by any provision of this Convention, it may nevertheless be taken into account in computing the tax on other income or in determining the rate of such tax.

(3) For the purpose of calculating the reliefs due under Articles VI and XIV, the income of a partnership shall be regarded as that of its individual members.

#### ARTICLE XVII

(1) The provisions of the present Convention shall not be construed as restricting in any manner any exemption, deduction, credit or other allowance now

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or hereafter accorded by the laws in force in the territory of one of the Contracting Parties in the determination of the tax imposed in such territory.

(2) The provisions of the present Convention shall not be construed as derogating from any right or privilege conferred upon taxpayers by the Agreement of the 17th October, 1931\* between the Government of the United Kingdom and the Swiss Federal Council for reciprocal exemption from taxation on profits or gains arising through an agency.

### ARTICLE XVIII

(1) The nationals of one Contracting Party shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other, higher or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected in similar circumstances.

(2) The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or in partnership, shall not be subjected in the other territory, in respect of income, profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like income, profits or capital.

(3) The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly by a resident or residents of the other territory, shall not be subjected in the first territory to any taxation which is other, higher or more burdensome than the taxation to which other like enterprises of that first territory are or may be subjected in similar circumstances in respect of the like income, profits and capital.

(4) Nothing in paragraph (1) or paragraph (2) of this Article shall be construed as obliging one Contracting Party to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to its own nationals.

(5) In this Article the term "nationals" means—

(a) in relation to Switzerland, all Swiss citizens wherever residing and all entities with or without juridical personality created under Swiss laws;

(b) in relation to the United Kingdom, all British subjects and British protected persons—

(i) residing in the United Kingdom or any territory to which the present Convention is extended under Article XXI, or

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\* Treaty Series No. 24 (1932) - Cmd 4142.

- (ii) deriving their status as such from connection with the United Kingdom or any territory to which the present Convention is extended under Article XXI, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the United Kingdom or any territory to which the Convention is extended under Article XXI.

(6) In this article the term "taxation" means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XIX

(1) Where a taxpayer shows to the satisfaction of the competent authority of the Contracting Party of which he is a national or in whose territory he is a resident that he has not received the treatment in the other territory to which he is entitled under any provision of this Convention, that competent authority shall consult with the competent authority of the other Party with a view to the avoidance of the double taxation in question.

(2) The competent authorities of the two Contracting Parties may communicate with each other directly for the purpose of giving effect to the provisions of this Convention (and in particular the provisions of Articles III and IV) and for resolving any difficulty or doubt as to the application or interpretation of the Convention.

#### ARTICLE XX

(1) The competent authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

(2) In no case shall the provisions of this Article be construed as imposing upon either of the Contracting Parties the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting Party or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of the Party making application.

## ARTICLE XXI

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

(2) The termination in respect of the United Kingdom or Switzerland of the present Convention under Article XXIV shall, unless otherwise expressly agreed by the Contracting Parties, terminate the application of the Convention to any territory to which it has been extended under this Article.

## ARTICLE XXII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

(2) The present Convention shall enter into force upon the exchange of ratifications.

## ARTICLE XXIII

(1) Upon the entry into force of the present Convention in accordance with Article XXII, the provisions of the Convention shall have effect —

(a) In the United Kingdom—

as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April, 1953;

as respects profits tax and excess profits levy in respect of the following profits—

(i) profits by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the 6th April, 1953;

(ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the 1st April, 1953, or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

(b) In Switzerland—

for any taxable year beginning on or after the 1st January, 1953.

(2) The exemption from tax provided in Article V shall have effect for any year of assessment beginning on or after the 6th April, 1946.

## ARTICLE XXIV

The present Convention shall continue in effect indefinitely but either Contracting Party may, on or before the 30th June in any calendar year not earlier than the year 1957, give to the other Contracting Party, through the diplomatic channel, written notice of termination and, in such event, the Convention shall cease to be effective—

In the United Kingdom—

as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

as respects profits tax in respect of the following profits—

- (i) profits by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;
- (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

In Switzerland—

for any taxable year beginning on or after the 1st January of the calendar year next following that in which the notice is given.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

Done in duplicate at London, the 30th day of September, one thousand nine hundred and fifty-four, in the English and French languages, both texts being equally authoritative.

(L.S.) DOUGLAS DODDS-PARKER.

(L.S.) E. BERNATH.

## SECOND SCHEDULE

**1. APPLICATION.** (1) The provisions of the Convention in the First Schedule shall apply as modified below as if the—

(a) Contracting Parties were the Government of the Virgin Islands and the Swiss Federal Council;

(b) taxes concerned in the case of the Virgin Islands were Income Tax in the Virgin Islands, and

(c) references to “the date of the signature of the present Convention” were references to the 26th day of August, 1963.

(2) The extension shall have effect in both the Virgin Islands and Switzerland from the fiscal year beginning 1st January, 1961.

(3) The present extension shall remain in force for a period of unlimited duration but it may be abrogated by either the Swiss Federal Council or the Government of the United Kingdom on or before the 30th day of June in any calendar year by giving to the Government of the Virgin Islands through the diplomatic channel written notice of termination in relation to the Virgin Islands and in such event the present extension shall cease to have effect in both Switzerland and the Virgin Islands as respects income for the taxable years beginning on or after the first day of January in the calendar year next following that in which notice is given.

**2. MODIFICATIONS.** For the purpose of extension of the Convention to the Virgin Islands—

(a) Article VI is deleted;

(b) all references to interest in Article VII of the Convention shall be deleted; and

(c) in Article XV (3) the words in brackets are replaced by the words “(with the exception of dividends and interest).”



S.R.O. 1/1948  
UK.-SI 1968 No. 578

THE INCOME TAX (DOUBLE TAXATION RELIEF) (UNITED KINGDOM) ORDER, MADE MARCH 22, 1948 UNDER SECTION 55 OF THE INCOME TAX ORDINANCE.

Short title.

1. This Order may be cited as the Income Tax (Double Taxation Relief) (United Kingdom) Order.

Declaration.

2. It is hereby declared —

(a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the United Kingdom with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the United Kingdom; and

(b) that it is expedient that those arrangements shall have effect.

SCHEDULE.

Arrangements between His Majesty's Government and the Government of the Virgin Islands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

1. (1) The Taxes which are the subject of this Arrangement are—

(a) In the United Kingdom:

The income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax").

(b) In the Virgin Islands:

The income tax (hereinafter referred to as "Virgin Islands tax").

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or the Virgin Islands after this Arrangement has come into force.

**2. (1)** In this Arrangement, unless the context otherwise requires—

(a) The term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

\*(c) The terms “one of the territories” and “the other territory” mean the United Kingdom or the Virgin Islands, as the context requires.

(d) The term “tax” means United Kingdom tax or Virgin Islands tax, as the context requires.

(e) The term “person” includes any body of persons, corporate or not corporate.

(f) The term “company” includes any body corporate.

(g) The terms “resident of the United Kingdom” and “resident of the Virgin Islands” mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the Virgin Islands for the purposes of Presidential tax and any person who is resident in the Virgin Islands for the purposes of Presidential Tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in the Virgin Islands if its business is managed and controlled in the Virgin Islands.

(h) The terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of the Virgin Islands, as the context requires.

(i) The terms “United Kingdom enterprise” and “Virgin Islands enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of the Virgin Islands; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Virgin Islands enterprise, as the context requires.

(j) The term “industrial or commercial profits” includes rentals in respect of cinematograph films.

(k) The term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf.

An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business

dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his business as such.

The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions), it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.

(3) In the application of the provisions of this Arrangement by the United Kingdom or the Virgin Islands, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, the Virgin Islands, relating to the taxes which are the subject of this Arrangement.

**3.** (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Virgin Islands tax unless the enterprise is engaged in trade or business in the Virgin Islands through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Virgin Islands but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Virgin Islands enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive from its activities in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

**4. Where—**

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory, and

(c) in either case conditions are made or imposed between the two enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

**5.** Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

**6.** (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

(3) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then subparagraph (1) shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this subparagraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent, or more of the class of shares in question:

Provided that this sub-paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reason and not primarily for the purpose of securing the benefit of this paragraph.

**7.** (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

**8.** (1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

**9.** (1) An individual who is a resident of the United Kingdom shall be exempt from Presidential tax on profits or remuneration in respect of personal (including professional) services performed within the Virgin Islands in any year of assessment if—

(a) he is present within the Virgin Islands for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a person resident in the United Kingdom, and

(c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of the Virgin Islands shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) the services are performed for or on behalf of a person resident in the Presidency, and

(c) the profits or remuneration are subject to Virgin Islands tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

**10.** (1) Any pension (other than a pension paid by the Government of the Virgin Islands for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the Virgin Islands by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Virgin Islands tax.

(2) Any pension (other than a pension paid by the Government of the Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of the Virgin Islands and subject to Virgin Islands tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

**11.** The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory.

**12.** A student or business apprentice from one of the territories who is receiving full time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

**13.** (1) Subject to the provisions of the law of the United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof)—

(a) Virgin Islands tax payable under the laws of the Virgin Islands and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the Virgin Islands shall be allowed as a credit against any United Kingdom tax computed by reference to the same profit or income by reference to which the Virgin Islands tax is computed.

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) where a company which is a resident of the Virgin Islands pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Virgin Islands tax for which credit may be allowed under (a) of this sub-paragraph) the Virgin Islands tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) Subject to the provisions of the laws of the Virgin Islands regarding the allowance as a credit against Virgin Islands tax of tax payable in a territory outside the Virgin Islands (which shall not affect the general principle hereof)—

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction on profits or income from sources within the United Kingdom shall be allowed a credit against any Virgin Islands tax computed by reference to the same profit or income by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in the Virgin Islands which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this sub-paragraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(3) For the purposes of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

(4) Where Virgin Islands income tax is payable for a year for which this Arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April, 1947, then—

(a) in the case of a person resident in the Virgin Islands, the Virgin Islands income tax shall, for the purposes of subparagraph (2) of this paragraph, be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of section 27 of the United Kingdom Finance Act, 1920; and

(b) in the case of a person resident in the United Kingdom, the provisions of section 51 of the Virgin Islands Income Ordinance, 1946, shall apply for the purposes of the allowance of relief from the Virgin Islands tax.

**14.** (1) The taxation authorities of the United Kingdom and the Virgin Islands shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this paragraph the term "taxation authorities" means the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom and the Income Tax Commissioners or their authorised representative in the case of the Virgin Islands.

**15.** This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and the Virgin Islands as are necessary to give the Arrangement the force of law in the United Kingdom and the Virgin Islands respectively, and shall thereupon have effect—

(a) in the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April, 1947, and subsequent years; as respects sur-tax for the year of assessment beginning on the 6th day of April, 1946, and subsequent years; and as respects profits tax for any chargeable accounting period beginning on or after the 1st day of January, 1947, and for the unexpired portion of any chargeable accounting period current at that date;

(b) in the Virgin Islands as respects income tax for the year of assessment beginning on the first day of January, 1947, and subsequent years.

**16.** This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of June in any calendar year after the year 1948, give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective—

(a) in the United Kingdom as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given; as respects sur-tax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and as respects profits tax for any chargeable accounting period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date;

(b) in the Virgin Islands, as respects income tax for any year of assessment beginning on or after the first day of January in the calendar year next following that in which such notice is given.



S.R.O. 12/1981.

THE INCOME TAX (DOUBLE TAXATION RELIEF) — (U.S.A.) (No.2)  
ORDER, MADE MARCH 30, 1981 UNDER SECTION 55 OF THE  
INCOME TAX ORDINANCE.

[24th February, 1981]

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Short title.

**1.** This Order may be cited as the Income Tax (Double  
Taxation Relief — U.S.A.) (No.2) Order,

Declaration.

**2.** It is hereby declared—

(a) that the arrangements specified in the Schedule have been made with the Government of the United States of America; and

(b) that it is expedient that those arrangements shall have effect.

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SCHEDULE

Convention between the Government of the United States of America and the Government of the British Virgin Islands (being duly authorised by the Government of the United Kingdom) desiring to conclude a new Convention for the avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income, have appointed for that purpose their Plenipotentiaries:

The Government of the Virgin Islands:

The Honourable H.L. Stouff, Chief Minister and Minister of Finance, and

The Government of the United States of America:

Acting Assistant Secretary Bushnell

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows:—

## ARTICLE I

1. Except as specifically provided herein, this Convention is applicable to persons who are residents of one or both of the Covered Jurisdictions.

2. Notwithstanding any provision of this Convention except paragraph (3), a Covered Jurisdiction may tax its residents (as determined under Article IV (Fiscal Residence) and its nationals as if this Convention had not come into effect. For this purpose the term "national" shall include, in the case of the United States, a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of income tax, but only for a period of 10 years following such loss.

3. Nothing in paragraph (2) shall affect the application by a Covered Jurisdiction of:

(a) paragraphs (1) (b) and (4) of Article XVIII (Pensions, Annuities, Alimony and Child Support); and Articles XXII (Elimination of Double Taxation), XXIII (Non-Discrimination) and XXIV (Mutual Agreement Procedure); and

(b) Articles XIX (Government Service) and XX (Students and Trainees), and paragraph (1) of Article XXVI (Miscellaneous), with respect to individuals who are neither nationals of, nor have immigrant status in, that Covered Jurisdiction.

## ARTICLE II

1. The existing taxes to which this Convention shall apply are:

(a) in the case of the United States, the Federal income taxes imposed by the Internal Revenue Code (but excluding the accumulated earnings tax and the personal holding company tax); the foregoing taxes covered are hereinafter referred to as "United States tax";

(b) in the case of the Virgin Islands, the taxes imposed on income (but excluding the petroleum income tax); the foregoing taxes covered are hereinafter referred to as "Virgin Islands tax".

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by a Covered Jurisdiction after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Covered Jurisdictions shall notify each other of any significant changes which have been made in their respective taxation laws.

3. For the purpose of Article XXIII (Non-Discrimination), this Convention shall also apply to taxes of every kind and description imposed by a Covered Jurisdiction, or by a political sub-division or local authority thereof. For the purposes of Article XXV (Exchange of Information and Administrative Assistance), this Convention shall also apply to taxes of every kind and description imposed by a Covered Jurisdiction.

## ARTICLE III

1. In this Convention, unless the context otherwise requires:

- (a) (i) the term "United States corporation" means a corporation (or any unincorporated entity treated as a corporation for United States tax purposes, which is created under the laws of the United States or any state thereof or the District of Columbia;
- (ii) the term "Virgin Islands corporation" means a body corporate which is created under the laws of the Virgin Islands;
- (b) the term "person" includes an individual, a corporation, a partnership, an estate, a trust and any other body of persons;
- (c) the term "enterprise of a Covered Jurisdiction" means an industrial or commercial undertaking carried on by a resident of a Covered Jurisdiction;
- (d) the term "international traffic" means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places within a Covered Jurisdiction;
- (e) the term "competent authority" means:
  - (i) in the case of the United States, the Secretary of the Treasury or his delegate; and
  - (ii) in the case of the Virgin Islands, the Minister of Finance or his delegate;
- (f) (i) the term "United States" means the United States of America; and
- (ii) when used in a geographical sense, means the states thereof and the District of Columbia, but does not include Puerto Rico, the United States Virgin Islands, Guam or any other United States possession or territory;
- (g) the term "Virgin Islands" means the islands in the Eastern Caribbean known as the "British" Virgin Islands;
- (h) the term "Covered Jurisdiction" means the United States or the Virgin Islands, as the context requires;
- (i) the term "nationals" means:
  - (i) in relation to the United States, United States citizens; and
  - (ii) in relation to the Virgin Islands, Virgin Islands belongers.

2. As regards the application of this Convention by a Covered Jurisdiction, any term not otherwise defined shall, unless the context otherwise requires and subject to the provisions of Article XXIV (Mutual Agreement Procedure), have the meaning which it has under the laws of that Covered Jurisdiction relating to the taxes which are the subject of this Convention.

## ARTICLE IV

## 1. For the purposes of this Convention:

## (a) the term "resident of the United States" means:

- (i) any person, other than a corporation, resident in the United States for the purposes of United States tax; but in the case of a partnership, estate or trust, only to the extent that the income derived by such partnership, estate or trust is subject to United States tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries; and
- (ii) a United States corporation;

## (b) the term "resident of the Virgin Islands" means:

- (i) any person, other than a corporation, resident in the Virgin Islands for the purposes of Virgin Islands tax; but in the case of a partnership, estate or trust, only to the extent that the income derived by such partnership, estate or trust is subject to Virgin Islands tax as the income of a resident, either in its hands or in the hands of its partners or beneficiaries; and
- (ii) a Virgin Islands corporation resident in the Virgin Islands for the purposes of Virgin Islands tax.

2. Where by reason of the provisions of paragraph (1) an individual is a resident of both Covered Jurisdictions, then the individual's tax status shall be determined as follows:

(a) the individual shall be deemed to be a resident of the Covered Jurisdiction in which he has a permanent home available to him. If the individual has a permanent home available to him in both Covered Jurisdictions, or in neither, he shall be deemed to be a resident of the Covered Jurisdiction with which his personal and economic relations are closer ("centre of vital interests");

(b) if the Covered Jurisdiction in which the individual's center of vital interests is located cannot be determined, he shall be deemed to be a resident of the Covered Jurisdiction in which he has an habitual abode;

(c) if the individual has an habitual abode in both Covered Jurisdictions, or in neither, he shall be deemed to be a resident of the Covered Jurisdiction of which he is a national; and

(d) if the individual is a national of both Covered Jurisdictions, or of neither, the competent authorities of the Covered Jurisdictions shall settle the question of mutual agreement.

3. Where by reason of the provisions of paragraph (1) a person other than an individual or a corporation is a resident of both Covered Jurisdictions, the competent authorities of the Covered Jurisdictions shall settle the question of residence by mutual agreement.

## ARTICLE V

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include especially:

- (a) a branch;
- (b) an office;
- (c) a factory;
- (d) a workshop;
- (e) a mine, oil or gas well, quarry or other place of extraction of natural resources;
- (f) a building site or construction or installation project, or an installation or drilling rig or ship used for or in connection with the exploration or exploitation of natural resources, or a supervisory activity connected with any of the foregoing, if, but only if, it exists for more than 24 months; and
- (g) a boat which is used in a Covered Jurisdiction for renting or chartering primarily for recreational purposes if, but only if, such use is for more than three months in any 12 month period.

3. Notwithstanding the provisions of paragraphs (1) and (2), the term "permanent establishment" shall be deemed not to include a fixed place of business used solely for one or more of the following activities:

- (a) the storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise for the purpose of processing by another person;
- (d) the maintenance of a fixed place of business for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
- (e) the maintenance of a fixed place of business for the purpose of advertising, for the supply of information, for a scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. A person acting in a Covered Jurisdiction on behalf of an enterprise of the other Covered Jurisdiction—other than an agent of an independent status to whom paragraph (5) applies—shall be deemed to be a permanent establishment of the enterprise in the first-mentioned Covered Jurisdiction if, but only if, such person has, and habitually exercises therein, an authority to conclude contracts in the

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name of the enterprise, unless the contracts are confined to the activities described in paragraph (3).

5. An enterprise (other than an enterprise carrying on the business of insurance) of a Covered Jurisdiction shall not be deemed to have a permanent establishment in that other Covered Jurisdiction merely because it carries on business in the other Covered Jurisdiction through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

6. The fact that a corporation which is a resident of a Covered Jurisdiction controls or is controlled by a corporation which is a resident of the other Covered Jurisdiction, or which carries on business in that other Covered Jurisdiction (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other.

#### ARTICLE VI

1. Income from real property, including income from agriculture or forestry, may be taxed in the Covered Jurisdiction in which such property is situated.

2. The term "real property" shall be defined in accordance with the laws of the Covered Jurisdiction in which the property in question is situated. The term shall in any case include usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resource.

3. The provisions of paragraph (1) shall apply to income derived from the direct use, letting or use in any other form of real property.

4. A resident of a Covered Jurisdiction who is subject to tax in the other Covered Jurisdiction on income from real property situated in that other Covered Jurisdiction may elect for any taxable year to compute the tax on such income on a net basis as if such income were attributable to a permanent establishment in that other Covered Jurisdiction. Any such election shall be binding for the taxable year of the election and all subsequent taxable years unless the competent authority of that other Covered Jurisdiction agrees to a termination of the election.

#### ARTICLE VII

1. The business profits of an enterprise of a Covered Jurisdiction shall be taxable only in that Covered Jurisdiction unless the enterprise carries on business in the other Covered Jurisdiction through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the business profits of the enterprise may be taxed in that other Covered Jurisdiction, but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph (3), where an enterprise of a Covered Jurisdiction carries on business in the other Covered Jurisdiction through a permanent establishment situated therein, there shall in each Covered Jurisdiction be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.

3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions those expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses, research and development expenses, interest and other expenses incurred for the purposes of the enterprise as a whole (or the part thereof which includes the permanent establishment), whether incurred in the Covered Jurisdiction in which the permanent establishment is situated or elsewhere.

4. No business profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

5. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

6. Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

7. For the purposes of this Convention, the term "business profits" includes, but is not limited to, income derived from manufacturing, mercantile, banking, insurance, agricultural, fishing or mining activities, the operation of ships or aircraft and the furnishing of services. Such term also includes any other income attributable to a permanent establishment which the recipient, being a resident of a Covered Jurisdiction, has in the other Covered Jurisdiction. Such term does not include the performance of personal services by an individual either as an employee or in an independent capacity; nor does such term include income from the rental of tangible personal property or the rental or licensing of cinematograph films or films or tapes used for radio or television broadcasting or from copyrights thereof.

## ARTICLE VIII

1. Profits derived by an enterprise of a Covered Jurisdiction from the operation of ships or aircraft in international traffic or between two places within that Covered Jurisdiction shall be taxable only in that Covered Jurisdiction.

2. For the purpose of this Article, profits derived by an enterprise of a Covered Jurisdiction from the operation of ships or aircraft in international traffic or between two places within that Covered Jurisdiction include profits derived from

the rental on a full or bareboat basis of ships or aircraft if operated in international traffic or between two places within that Covered Jurisdiction by the lessee or if such rental profits are incidental to other income described in paragraph (1), but do not include profits attributable to a permanent establishment described in paragraph (2) (g) of Article V (Permanent Establishment).

3. Profits derived by an enterprise of a Covered Jurisdiction from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic or between two places within that Covered Jurisdiction shall be taxable only in that Covered Jurisdiction.

4. The provisions of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

5. Gains derived by an enterprise of a Covered Jurisdiction from the alienation of ships, aircraft or containers owned by such enterprise, the income from which is taxable only in that Covered Jurisdiction, shall be taxable only in that Covered Jurisdiction.

## ARTICLE IX

### 1. Where—

(a) an enterprise of a Covered Jurisdiction participates directly or indirectly in the management, control or capital of an enterprise in the other Covered Jurisdiction, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Covered Jurisdiction and an enterprise of the other Covered Jurisdiction,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would have been made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Covered Jurisdiction includes in the profits of an enterprise of that Covered Jurisdiction and taxes accordingly profits on which an enterprise of the other Covered Jurisdiction has been charged to tax in that other Covered Jurisdiction, and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Covered Jurisdiction if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Covered Jurisdiction shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Covered Jurisdiction shall if necessary consult each other.



3. The provisions of paragraph (1) shall not limit any provisions of the law of either Covered Jurisdiction which permit the distribution, apportionment or allocation of income, deductions, credits or allowances between person owned or controlled directly or indirectly by the same interests when necessary in order to prevent evasion of taxes or clearly to reflect the income of any such persons.

#### ARTICLE X

1. Dividends paid by a corporation which is a resident of a Covered Jurisdiction to a beneficial owner who is a resident of the other Covered Jurisdiction may be taxed in the first-mentioned Covered Jurisdiction, but the tax imposed shall not exceed 15 percent of the gross amount of the dividends.

2. The term "dividends" for United States tax purposes includes any item which under the law of the United States is treated as a distribution out of earnings and profits and for Virgin Islands tax purposes includes any item which under the law of the Virgin Islands is treated as a distribution.

3. Paragraph (1) shall not apply if the person deriving the dividends, being a resident of a Covered Jurisdiction, carries on business in the other Covered Jurisdiction through a permanent establishment situated therein, or performs in that other Covered Jurisdiction independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article VII (Business Profits) or XV (Independent Personal Services), as the case may be, shall apply.

4. A Covered Jurisdiction may not impose any tax on dividends paid by a corporation which is a resident of the other Covered Jurisdiction, except insofar as:

(a) such dividends are paid to a resident of the first mentioned Covered Jurisdiction;

(b) the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in the first-mentioned Covered Jurisdiction; or

(c) such dividends are paid out of profits attributable to one or more permanent establishments which such corporation had in the first-mentioned Covered Jurisdiction, provided that the gross income attributable to such permanent establishments constituted at least 50 per cent of such corporations's gross income from all sources.

Where subparagraph (c) applies and subparagraphs (a) and (b) do not apply, any such tax shall be subject to the limitations of paragraph (1).

#### ARTICLE XI

1. Interest arising in a Covered Jurisdiction and paid to a beneficial owner who is a resident of the other Covered Jurisdiction may be taxed in the first-mentioned Covered Jurisdiction, but the tax imposed shall not exceed 15 per cent of the gross amount of the interest.

2. The term "interest" means income from Government securities, and income from bonds, debentures or notes, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation laws of the Covered Jurisdiction in which the income arises but shall not include any income which is treated as a dividend under the provisions of Article X (Dividends). Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3. The provisions of paragraph (1) shall not apply if the person deriving the interest, being a resident of a Covered Jurisdiction, carries on business in the other Covered Jurisdiction through a permanent establishment situated therein, or performs in that other Covered Jurisdiction independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article VII (Business Profits) or XV (Independent Personal Services), as the case may be, shall apply.

4. Where, owing to a special relationship between the payer and the person deriving the interest or between both of them and some other person, the amount of the interest paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Covered Jurisdiction, due regard being had to the other provisions of this Convention.

5. Interest shall be deemed to arise in a Covered Jurisdiction if, under its domestic laws, such interest has its source in that Covered Jurisdiction.

## ARTICLE XII

1. Royalties arising in a Covered Jurisdiction and paid to a beneficial owner who is a resident of the other Covered Jurisdiction may be taxed in the first-mentioned Covered Jurisdiction, but the tax imposed shall not exceed 15 per cent of the gross amount of the royalties.

2. The term "royalties" means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films or films or tapes used for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process or other like right or property, any information concerning industrial, commercial or scientific experience or any tangible personal property; the term "royalties" shall also include gains derived from the alienation of any such right or property which are contingent on the productivity, use or disposition thereof.

3. The provisions of paragraph (1) shall not apply if the person deriving the royalties, being a resident of a Covered Jurisdiction, carries on business in the other

Covered Jurisdiction independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article XII (Business Profits) or XV (Independent Personal Services), as the case may be, shall apply.

4. Where, owing to a special relationship between the payer and the person deriving the royalties or between both of them and some other person, the amount of the royalties paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Covered Jurisdiction, due regard being had to the other provisions of this Convention.

5. Royalties shall be deemed to arise in a Covered Jurisdiction if they represent payment in consideration for the use of, or the right to use, rights or property in that Covered Jurisdiction.

#### ARTICLE XIII

A corporation which is a resident of a Covered Jurisdiction and which receives dividends, interest or royalties arising within the other Covered Jurisdiction may be taxed in that other Jurisdiction without regard to Articles X (Dividends), XI (Interest) and XII (Royalties) if:

(a) by reason of special measures the tax imposed by the first-mentioned Covered Jurisdiction on such corporation with respect to such dividends, interest or royalties is less than the tax imposed by the first-mentioned Covered Jurisdiction on corporate profits arising in the first-mentioned Covered Jurisdiction; and

(b) twenty-five per cent or more of the capital of such corporation is held of record or is otherwise determined to be owned, directly or indirectly, by one or more individuals who are not residents of the first-mentioned Covered Jurisdiction.

#### ARTICLE XIV

Except as provided in Articles VIII (Shipping and Air Transport) and XII (Royalties), each Covered Jurisdiction may tax capital gains in accordance with the provisions of its domestic law.

#### ARTICLE XV

Income derived by an individual who is a resident of a Covered Jurisdiction from the performance of personal services in an independent capacity may be taxed in the other Covered Jurisdiction if:

(a) the individual is present in that other Covered Jurisdiction for a period or periods exceeding in the aggregate 183 days in the taxable year concerned,

but only so much thereof as is attributable to the services performed in that other Covered Jurisdiction; or

(b) the individual has a fixed base regularly available to him in that other Covered Jurisdiction for the purpose of performing his activities, but only so much thereof as is attributable to the services performed in that other Covered Jurisdiction.

#### ARTICLE XVI

1. Subject to the provisions of Articles XVIII (Pensions, Annuities, Alimony and Child Support) and XIX (Government Service), salaries, wages and other similar remuneration derived by a resident of a Covered Jurisdiction in respect of an employment shall be taxable only in that Covered Jurisdiction unless the employment is exercised in the other Covered Jurisdiction. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Covered Jurisdiction.

2. Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Covered Jurisdiction in respect of an employment exercised in the other Covered Jurisdiction shall be taxable only in the first-mentioned Covered Jurisdiction if:

(a) the recipient is present in that other Covered Jurisdiction for a period or periods not exceeding in the aggregate 183 days in the taxable year concerned;

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that other Covered Jurisdiction; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in that other Covered Jurisdiction.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment as a member of the regular complement of a ship or aircraft operated in international traffic or between two places is within a Covered Jurisdiction by an enterprise of that Covered Jurisdiction shall be taxable only in that Covered Jurisdiction.

#### ARTICLE XVII

1. Notwithstanding the provisions of Articles XV (Independent Personal Services) and XVI (Dependent Personal Services), income derived by a resident of a Covered Jurisdiction as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such may be taxed in the Covered Jurisdiction in which those activities are exercised, except where the amount of the gross receipts derived by such entertainer or athlete, including expenses reimbursed to him or borne on his behalf, from such activities in that Covered Jurisdiction do not exceed 15,000 United States dollars in the taxable year concerned.

2. Where income in respect of personal activities of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles VII (Business Profits), XV (Independent Personal Services), and XVI (Dependent Personal Services), be taxed in the Covered Jurisdiction in which the activities of the entertainer or athlete are exercised. For the purposes of the preceding sentence, income of an entertainer or athlete shall be deemed not to accrue to another person if it is established that neither the entertainer nor the athlete, nor persons related thereto, participate directly or indirectly in the profits of such other person in any manner, including the receipt of deferred remuneration, bonuses, fees, dividends, partnership distributions or other distributions.

#### ARTICLE XVIII

1. Subject to the provisions of paragraph (2) of Article XIX (Government Service):

(a) pensions and other similar remuneration beneficially derived by a resident of a Covered Jurisdiction in consideration of past employment shall be taxable only in that Covered Jurisdiction; and

(b) social security payments and other public pensions paid by a Covered Jurisdiction to an individual who is a resident of the other Covered Jurisdiction or a citizen of the United States shall be taxable only in the first-mentioned Covered Jurisdiction.

2. Annuities beneficially derived by a resident of a Covered Jurisdiction shall be taxable only in that Jurisdiction. The term "annuity" as used in this paragraph means a stated sum paid periodically at stated times during life or during a specified number of years, under an obligation to make the payments in return for adequate and full consideration (other than services rendered).

3. Alimony paid to a resident of a Covered Jurisdiction by a resident of the other Covered Jurisdiction shall be exempt from tax in the other Covered Jurisdiction. The term "alimony" as used in this paragraph means periodic payments made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, which payments are taxable to the recipient under the laws of the Covered Jurisdiction of which he is a resident.

4. Periodic payments for the support of a minor child made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, paid by a resident of a Covered Jurisdiction to a resident of the other Covered Jurisdiction, shall be exempt from tax in both Covered Jurisdictions.

#### ARTICLE XIX

1. (a) Remuneration, other than a pension, paid by a Covered Jurisdiction or a political subdivision or a local authority thereof to an individual in respect

of services rendered to that Covered Jurisdiction or subdivision or local authority shall be taxable only in that Covered Jurisdiction.

(b) However, such remuneration shall be taxable only in the other Covered Jurisdiction if the services are rendered in that other Covered Jurisdiction and the recipient is a resident and a national of that other Covered Jurisdiction.

2. (a) Any pension paid by a Covered Jurisdiction or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Covered Jurisdiction or subdivision or local authority shall be taxable only in that Covered Jurisdiction.

(b) However, such pension shall be taxable only in the other Covered Jurisdiction if the recipient is a resident and a national of that other Covered Jurisdiction.

3. The provisions of Articles XV (Independent Personal Services), XVI (Dependent Personal Services), XVII (Artistes and Athletes) and XVIII (Pensions, Annuities, Alimony and Child Support), as the case may be, shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by or on behalf of a Covered Jurisdiction or a political subdivision or a local authority thereof.

## ARTICLE XX

Payments which a student or business apprentice who is or was immediately before visiting a Covered Jurisdiction a resident of the other Covered Jurisdiction, and who is present in the first-mentioned Covered Jurisdiction for the purpose of his full-time education or training, received for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned Covered Jurisdiction, provided that such payments are made to him from sources outside the first-mentioned Covered Jurisdiction.

## ARTICLE XXI

1. Items of income of a resident of a Covered Jurisdiction, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that Covered Jurisdiction.

2. The provisions of paragraph (1) shall not apply if the person deriving the income, being a resident of a Covered Jurisdiction, carries on business in the other Covered Jurisdiction through a permanent establishment situated therein, or performs in that other Covered Jurisdiction independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article VII (Business Profits) or XV (Independent Personal Services), as the case may be, shall apply.

## ARTICLE XXII

1. In accordance with the provisions and subject to the limitations of the law of the United States (as it may be amended from time to time without changing the general principle hereof), the United States shall allow a resident or national of the United States as a credit against the United States tax the appropriate amount of tax paid to the Virgin Islands; and, in the case of a United States corporation owning at least 10 per cent of the voting stock of a corporation which is a resident of the Virgin Islands from which it receives dividends in any taxable year, the United States shall allow credit for the appropriate amount of tax paid to the Virgin Islands by that corporation with respect to the profits out of which such dividends are paid. Such appropriate amount shall be based upon the amount of tax paid to the Virgin Islands, but the credit shall not exceed the limitations (for the purpose of limiting the credit to the United States tax on income from sources outside of the United States) provided by United States law for the taxable year. For the purposes of applying the United States credit in relation to tax paid to the Virgin Islands the Virgin Islands tax referred to in paragraphs (1) (b) and (2) of Article II (Taxes Covered) shall be considered to be income taxes.

2. In accordance with the provisions and subject to the limitations of the law of the Virgin Islands regarding the allowance as a credit against the Virgin Islands tax of tax payable in a territory outside the Virgin Islands (as it may be amended from time to time without changing and general principle hereof):

(a) United States tax payable under the law of the United States and in accordance with this Convention, whether directly or by deduction, on profits or income from sources within the United States (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Virgin Islands tax computed by reference to the same profits or income by reference to which the United States tax is computed; and

(b) in the case of a dividend paid by a United States corporation to a corporation which is a resident of the Virgin Islands and which owns at least 10 per cent of the voting stock of the United States corporation, the credit shall take into account (in addition to any United States tax creditable under subparagraph (a), the United States tax payable in respect of the profits out of which such dividend is paid.

3. For the purposes of paragraphs (1) and (2), income or profits derived by a resident of a Covered Jurisdiction which may be taxed in the other Covered Jurisdiction in accordance with this Convention shall be deemed to arise from sources within that other Covered Jurisdiction, except that where the United States tax solely on the basis of citizenship, the Virgin Islands shall not be bound to give credit to a United States national who is a resident of the Virgin Islands on income from sources outside the United States as determined under the laws of the Virgin Islands (including this Convention).

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**ARTICLE XXIII**

1. Nationals of a Covered Jurisdiction shall not be subjected in the other Covered Jurisdiction to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Covered Jurisdiction in the same circumstances are or may be subjected. For purposes of the preceding sentence, nationals of the United States who are not residents of the United States are not, with respect to United States taxation, in the same circumstances as nationals of the Virgin Islands who are not residents of the United States.

2. The taxation on a permanent establishment which an enterprise of a Covered Jurisdiction has in the other Covered Jurisdiction shall not be less favourably levied in that other Covered Jurisdiction than the taxation levied on enterprises of that other Covered Jurisdiction carrying on the same activities.

3. Interest, royalties and other disbursements paid by an enterprise of a Covered Jurisdiction to a resident of the other Covered Jurisdiction shall, if reasonable in amount, be deductible for the purpose of determining the taxable profits of such enterprise under the same conditions as if they had been paid to a resident of the first-mentioned Covered Jurisdiction. For the purpose of this paragraph, the term "other disbursements" shall include charges for amounts expended by such a resident for the purposes of such an enterprise, include a reasonable allocation of executive and general administrative expenses (except to the extent representing expenses of a type of activity which is not for the benefit of such enterprise but constitutes "stewardship" of "over-seeing" functions undertaken for such resident's own benefit as an investor in the enterprise), research and development expenses and other expenses incurred by such a resident for the benefit of a group of related enterprise including such an enterprise.

4. Enterprises of a Covered Jurisdiction, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Covered Jurisdiction, shall not be subjected in the first-mentioned Covered Jurisdiction to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Covered Jurisdiction are or may be subjected.

5. Nothing contained in this Article shall be construed as obliging either Covered Jurisdiction to grant to an individual who is not a resident of that Covered Jurisdiction any of the personal allowances and reliefs which are granted to individuals who are residents of that Covered Jurisdiction.

**ARTICLE XXIV**

1. Where a resident or national of a Covered Jurisdiction considers that the actions of one or both of the Covered Jurisdictions result or will result in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the domestic laws of those Covered Jurisdictions, present his case to the



competent authority of the Covered Jurisdiction of which he is a resident or national. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Covered Jurisdiction, with a view to the avoidance of taxation not in accordance with the Convention. Where an agreement has been reached, a refund as appropriate shall be made to give effect to the agreement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic laws of the Covered Jurisdictions.

2. The competent authorities of the Covered Jurisdictions shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular, the competent authorities of the Covered Jurisdictions may reach agreement on:

- (a) the attribution of income, deductions, credits or allowances of an enterprise of a Covered Jurisdiction to its permanent establishment situated in the other Covered Jurisdiction;
- (b) the allocation of income, deductions, credits or allowances between persons;
- (c) the nature of particular items of income;
- (d) a common meaning of a term used in this Convention; and
- (e) the place where a particular item of income has its source.

They may also consult together for the elimination of double taxation in cases not provided for in this Convention.

3. The competent authorities of the Covered Jurisdictions may communicate with each other directly for the purpose of reaching agreement as contemplated by this Convention.

## ARTICLE XXV

1. The competent authorities of the Covered Jurisdictions shall exchange such information (being information available under the respective taxation laws of the Covered Jurisdictions) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with the assessment, collection, administration, enforcement or prosecution in respect of taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret. Such persons shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial proceedings. No such information shall be disclosed to any third jurisdiction for any purpose.

2. If information is requested by a Covered Jurisdiction in accordance with this Article, the other Covered Jurisdiction shall obtain the information to which

the request relates in the same manner and to the same extent as if the tax of the first-mentioned Covered Jurisdiction were the tax of that other Covered Jurisdiction and were being imposed by that other Covered Jurisdiction. If specifically requested by the competent authority of the other Covered Jurisdiction, the competent authority of the other Covered Jurisdiction shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other Covered Jurisdiction with respect to its own taxes.

3. In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on a Covered Jurisdiction the obligation to supply information to the other Covered Jurisdiction which would not be obtainable under the laws or in the normal course of the administration of that other Covered Jurisdiction.

4. Each of the Covered Jurisdictions will endeavour to collect on behalf of the other Covered Jurisdiction such amounts as may be necessary to ensure that relief granted by this Convention from taxation imposed by such other Covered Jurisdiction does not enure to the benefit of persons not entitled thereto. This paragraph shall not impose upon either of the Covered Jurisdictions the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own tax, or which would be contrary to its sovereignty, security or public policy.

5. The competent authorities of the Covered Jurisdictions shall consult with each other for the purpose of co-operating and advising in respect of any action to be taken in implementing this Article.

#### ARTICLE XXVI

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

2. Nothing in this Convention shall restrict in any manner any exclusion, exemption, deduction, credit or other allowance now or hereafter accorded by the laws of either Covered Jurisdiction.

3. Where under any provision of this Convention income arising in a Covered Jurisdiction is wholly or partly relieved from tax in that Covered Jurisdiction and, under the laws in force in the other Covered Jurisdiction, a person in respect of such income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Covered Jurisdiction and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Covered Jurisdiction shall apply only to so much income as is remitted to or received in the other Covered Jurisdiction during the taxable period in which such income arises.

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ARTICLE XXVII

1. This Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Convention shall enter into force upon the exchange of instrument of ratification and its provisions shall have effect:

(a) in respect of taxes withheld at the source, for amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force;

(b) in respect of other taxes, for taxable periods beginning on the first day of January next following the date on which this Convention enters into force.

3. Upon the coming into effect of this Convention, the Convention between the United Kingdom of Great Britain and Northern Ireland and the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Washington on 16 April 1945, as amended by the Supplementary Protocol signed at Washington on 6 June 1946, by the Supplementary Protocol signed at Washington on 25 May 1954, by the Supplementary Protocol signed at Washington on 19 August 1957, and as extended to the Virgin Islands, shall cease to have effect in respect of taxes to which this Convention, in accordance with the provisions of paragraph (2), applies, and the 1945 Convention thereafter will terminate.

4. Notwithstanding any other provision of this Convention, in determining the source of income for purposes of applying United States taxes to dividends or interest paid on or after the date specified in paragraph (2) (a) by a Virgin Islands corporation to a person who is not a citizen or resident of the United States, such Virgin Islands corporation shall be deemed to have been created on the date so specified.

5. Notwithstanding any other provision of this Convention interest paid by a Virgin Islands corporation on any debt obligation which was issued and outstanding on 1 July 1980, shall be exempt from United States tax except where the recipient is a resident or national of the United States. For the purpose of this paragraph, a debt obligation shall be treated as issued and outstanding on such date if it was issued after such date pursuant to an agreement entered into on or before such date.

## ARTICLE XXVIII

1. This Convention shall remain in force indefinitely but either of the Covered Jurisdictions may terminate the Convention at any time after 5 years from the date on which this Convention enters into force by giving to the other Covered Jurisdiction, through diplomatic channels, at least 6 months' prior notice of termination; in such event, this Convention shall cease to be effective:

(a) in respect of taxes withheld at the source, for amounts paid or credited on or after the first day of January next following the expiration of the 6 months' period; and

(b) in respect of other taxes, for taxable periods beginning on or after the first day of January next following the expiration of the 6 months' period.

2. Notwithstanding the provisions of paragraph (1), if a Covered Jurisdiction determines that the other Covered Jurisdiction has amended its laws or procedures in a manner which would unreasonably limit the ability of the competent authority of the first-mentioned Covered Jurisdiction to obtain information from the competent authority of that other Covered Jurisdiction under Article 25 (Exchange of Information and Administrative Assistance), the first-mentioned Covered Jurisdiction may terminate this Convention by giving to that other Covered Jurisdiction, through diplomatic channels, at least six months' prior notice of termination.

In such event, this Convention shall cease to be effective in accordance with the provisions of subparagraphs (a) and (b) of paragraph (1).

3. A termination of this Convention shall not have the effect of reviving any treaty or arrangement abrogated by this Convention or by any treaty previously concluded between the United States and the United Kingdom for the Virgin Islands.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

DONE in duplicate at Washington this eighteenth day of February, 1981.

FOR THE GOVERNMENT  
OF THE BRITISH  
VIRGIN ISLANDS:

H.L. STOUTT

FOR THE GOVERNMENT  
OF THE UNITED STATES  
OF AMERICA:

JOHN C. BUSHNELL