
STATUTORY INSTRUMENTS

1996 No. 2599

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Venezuela) Order 1996

Made - - - - 15th October 1996

At the Court at Buckingham Palace, the 15th day of October 1996

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(1), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of the said Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows: —

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Venezuela) Order 1996.
2. It is hereby declared —
 - (a) that the arrangements specified in the Convention set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the Government of the Republic of Venezuela with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Venezuela;
 - (b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of Venezuela concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
 - (c) that it is expedient that those arrangements should have effect.

(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992(c. 12).

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N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

PART I

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

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Venezuela;

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

Have agreed as follows:

CHAPTER I

SCOPE OF CONVENTION

Article 1

Personal scope

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

Article 2

Taxes covered

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

(a) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(hereinafter referred to as “United Kingdom tax”);

(b) in the case of Venezuela:

(i) the income tax;

(ii) the business assets tax;

(hereinafter referred to as “Venezuelan tax”).

(2) The Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph (1) of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

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CHAPTER II DEFINITIONS

Article 3

General definitions

- (1) For the purposes of this Convention, unless the context otherwise requires:
- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;
 - (b) the term “Venezuela” means the Republic of Venezuela;
 - (c) the term “national” means:
 - (i) in relation to the United Kingdom, any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Venezuela, any individual possessing the nationality of the Republic of Venezuela, and any legal person, partnership or association deriving its status as such from the laws in force in Venezuela.
 - (d) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Venezuela, as the context requires;
 - (e) the term “person” comprises an individual, a company and any other body of persons, but does not include partnerships which are not treated as bodies corporate for tax purposes in either Contracting State;
 - (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and, in the case of Venezuela, the Integrated National Service of Tax Administration (Servicio Nacional Integrado de Administracion Tributaria — SENIAT), its authorised representative or the authority which is designated by the Minister of Finance as the competent authority for the purposes of this Convention.
- (2) As regards the application of this Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

Article 4

Resident

- (1) For the purposes of this Convention, the term “resident of a Contracting State” means:
- (a) any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature;
 - (b) the Government of that State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority.
- (2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his residence shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- (3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Article 5

Permanent establishment

- (1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
- (2) The term “permanent establishment” includes especially:
- (a) a place of management;
 - (b) a branch;
 - (c) an office;
 - (d) a factory;
 - (e) a workshop;
 - (f) a mine, a quarry or any other place of extraction of natural resources;
 - (g) a building site or construction or installation project lasting more than twelve months, starting from the date when effective work begins.
- (3) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

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- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, publicity, the supply of information, scientific research or any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person — other than an agent of an independent status to whom paragraph (5) of this Article applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in paragraph (3) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(5) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(6) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

CHAPTER III

TAXATION OF INCOME

Article 6

Income from immovable property

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, 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, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7

Business profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than by way of reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of a commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on money lent to the permanent establishment.

(4) No 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 or capital gains which are dealt with separately in other Article s of this Convention, then the provisions of those Article s shall not be affected by the provisions of this Article.

Article 8

Shipping and air transport

(1) Profits derived by a resident of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) income from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

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(3) Where profits within paragraph (1) or (2) of this Article are derived by a resident of a Contracting State from participation in a pool, a joint business or an international operating agency, the profits attributable to that resident shall be taxable only in the Contracting State of which he is a resident.

(4) Notwithstanding paragraph (1) of this Article, profits derived by a resident of a Contracting State from the operation of ships used for the transport of hydrocarbons may be taxed in the other Contracting State; and in this paragraph “hydrocarbons” means natural gas, liquefied natural gas, crude petroleum and the products derived exclusively from the first phase of the refining of crude petroleum.

Article 9

Associated enterprises

(1) Where:

- (a) an enterprise of a Contracting State 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 a Contracting State 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 by a Contracting State in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State — and taxes accordingly — profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State 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 Contracting States shall if necessary consult each other.

Article 10

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 10 per cent. of the gross amount of the dividends.

(3) Notwithstanding paragraph (2) of this Article, the Contracting State of which the company paying the dividends is a resident shall not levy a tax on dividends paid by that company if the beneficial owner of the dividends is a company which controls, directly or indirectly, at least 10 per cent. of the voting power in the company paying the dividends.

(4) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the

provisions of Article 11 of this Convention) which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividend is a resident, through a permanent establishment situated therein, or performs in that other State 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 case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

Article 11

Interest

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest and subject to tax in respect of the interest in the other Contracting State the tax so charged shall not exceed 5 per cent. of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if:

- (a) the payer of the interest is the Government itself or a local authority of that State; or
- (b) the interest is paid to the Government of the other Contracting State or to a local authority thereof.

(4) Notwithstanding the provisions of Article 7 of this Convention and of paragraph (2) of this Article, interest arising in a Contracting State which is paid to and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the United Kingdom Export Credits Guarantee Department, the Venezuelan Export Financing Fund ("FINEXPO") or the Venezuelan Investment Fund (Fondo de Inversiones de Venezuela).

(5) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from Government securities and income from bonds or debentures. The term "interest" shall not include any item which is treated as a distribution under the provisions of Article 10 of this Convention.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other

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Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State 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 case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(7) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such a permanent establishment or fixed base, then such interest shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.

(8) Where, by reason of a special relationship between the payer and the beneficial owner 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 agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such case, the excess part of the payment shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(9) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

(10) For the purposes of this Article the following residents of a Contracting State shall be deemed to be subject to tax in that State:

- (a) the Government of a Contracting State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority;
- (b) a company which is a resident of a Contracting State and
 - (i) at least 50 per cent. of the share capital of which is owned by the Government of that State or by a political subdivision or by a local authority of that State; or
 - (ii) which is engaged in an active trade or business in that State; or
 - (iii) the principal class of shares of which is substantially and regularly traded on a recognised stock exchange of that Contracting State;
- (c) an individual who is a resident of a Contracting State.

Article 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and subject to tax in respect of the royalties in the State of which he is a resident the tax so charged on the gross amount of the royalties shall not exceed 7 per cent. in the case of royalties within paragraph (3) (a) of this Article and 5 per cent. in the case of royalties within paragraph (3)(b) of this Article.

(3) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use:

- (a) any copyright of literary, artistic or scientific work, including cinematograph films, and films or tapes for radio or television broadcasting; and
- (b) any patent, trademark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.

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(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State 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 case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State where the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner 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 agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

(8) For the purposes of this Article the following residents of a Contracting State shall be deemed to be subject to tax in that State:

- (a) the Government of a Contracting State or a political subdivision or local authority thereof or any agency or instrumentality of any such government, subdivision or authority;
- (b) a company which is a resident of a Contracting State and
 - (i) at least 50 per cent. of the share capital of which is owned by the Government of that State or by a political subdivision or by a local authority of that State; or
 - (ii) which is engaged in an active trade or business in that State; or
 - (iii) the principal class of shares of which is substantially and regularly traded on a recognised stock exchange of that Contracting State;
- (c) an individual who is a resident of a Contracting State.

Article 13

Capital gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 of this Convention and situated in the other Contracting State may be taxed in that other State.

(2) Gains derived by a resident of a Contracting State from the alienation of:

- (a) shares, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or
- (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in sub-paragraph (a) above,

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may be taxed in that other State.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(4) Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the enterprise operating the ships or aircraft is resident.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) of this Article shall be taxable only in the Contracting State of which the alienator is a resident, so long as he is subject to tax in respect of those gains in that Contracting State.

(6) The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

Article 14

Independent personal services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

(2) The term “professional services” includes among others independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Article 15

Dependent personal services

(1) Subject to the provisions of Articles 16, 18 and 19 of this Convention, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

Article 16

Director's fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 17

Artistes and athletes

(1) Notwithstanding the provisions of Articles 14 and 15 of this Convention, income derived by a resident of a Contracting State 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 exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

Article 18

Pensions and annuities

(1) Pensions and other similar remuneration and any annuity paid in consideration of past employment in a Contracting State which arise in that Contracting State shall be taxable only in that Contracting State in proportion to the term of employment in that Contracting State.

(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 return for adequate and full consideration in money or money's worth.

Article 19

Government service

(1)(a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) Notwithstanding the provisions of sub-paragraph (1)(a) of this Article, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) The provisions of Articles 15, 16 and 18 of this Convention shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

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Article 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in the first-mentioned State, provided that such payments arise from sources outside that State.

Article 21

Other income

(1) Items of income beneficially owned by a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Article s of this Convention, other than income paid out of trusts or the estates of deceased persons in the course of administration, shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Convention, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Article s, and arising in the other Contracting State, may be taxed in that other State.

(4) Where, by reason of a special relationship between the resident referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

(5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Article by means of that creation or assignment.

CHAPTER IV

METHODS FOR THE ELIMINATION OF DOUBLE TAXATION

Article 22

Elimination of double taxation

(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 (which shall not affect the general principle hereof):

- (a) Venezuelan tax payable under the laws of Venezuela and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Venezuela (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 United

Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Venezuelan tax is computed;

- (b) in the case of a dividend paid by a company which is a resident of Venezuela to a company which is a resident of the United Kingdom, and which controls directly or indirectly at least 10 per cent. of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Venezuelan tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Venezuelan tax payable by the company in respect of the profits out of which such dividend is paid.

(2) In the case of Venezuela, subject to the provisions of the law of Venezuela, double taxation shall be avoided as follows:

- (a) where a resident of Venezuela receives income which according to the provisions of this Convention may be taxed in the United Kingdom, that income shall be exempted from Venezuelan tax;
- (b) if, under the law of Venezuela, a resident of Venezuela is subject to taxation in Venezuela on worldwide income, the provisions of sub-paragraph (a) of this paragraph shall not apply and double taxation shall be eliminated in accordance with sub-paragraphs (c), (d) and (e) of this paragraph;
- (c) where a resident of Venezuela derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Venezuela shall allow as a deduction from the Venezuelan tax on the income of that resident an amount equal to the United Kingdom tax paid in the United Kingdom;
- (d) the deduction allowed under sub-paragraph (c) of this paragraph shall not exceed that part of the Venezuelan income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United Kingdom;
- (e) where in accordance with any provision of this Convention income derived by a resident of Venezuela is exempt from tax in Venezuela, Venezuela may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

(3) For the purpose of paragraph (1) of this Article, the term “Venezuelan tax payable” shall be deemed to include any amount which would have been payable as Venezuelan tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under any of the following provisions of Venezuelan law:

- (a) Article s 57, 58 and 59 of the Income Tax Law of 1994 so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or
- (b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character,

where the exemption from or reduction of tax so granted is certified by the competent authority of Venezuela as being for the purpose of promoting new industrial, commercial, scientific, educational or agricultural development in Venezuela.

(4) Relief from United Kingdom tax by virtue of paragraph (3) of this Article shall not be given where the profits, income or chargeable gains in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that paragraph arise or accrue more than ten years after the date on which this Convention enters into force.

(5) The period referred to in paragraph (4) of this Article may be extended by agreement between the Contracting States.

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(6) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

Article 23

Non-discrimination

(1) Nationals of a Contracting State 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 nationals of that other State in the same circumstances are or may be subjected.

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

(3) Except where the provisions of paragraph (1) of Article 9, paragraph (8) or (9) of Article 11, paragraph (6) or (7) of Article 12 or paragraph (4) or (5) of Article 21 of this Convention apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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 first-mentioned State are or may be subjected.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

(6) The provisions of this Article shall apply to the taxes which are the subject of this Convention.

Article 24

Partnerships

Where, under any provision of this Convention, a partnership is entitled, as a resident of Venezuela, to exemption from tax in the United Kingdom on any income or capital gains, that provision shall not be construed as restricting the right of the United Kingdom to tax any member of the partnership who is a resident of the United Kingdom on his share of such income or capital gains; but any such income or gains shall be treated for the purposes of Article 22 of this Convention as income or gains from sources in Venezuela.

Article 25

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with

the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Article 26

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention; in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Convention. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice prevailing in either Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of either Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

Article 27

Members of diplomatic or permanent missions and consular posts

Nothing in this Convention shall affect any fiscal privileges accorded to members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 28

Entry into force

(1) Each of the Contracting States shall notify to the other, through the diplomatic channel, the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Convention enters into force;

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- (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Convention enters into force;
- (b) in Venezuela:
 - in respect of the income tax and the business assets tax, for any year beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

(2) The existing Agreement for the Avoidance of Double Taxation in respect of Shipping and Air Transport signed in Caracas on 8th March 1978, and the Protocol amending the said Agreement signed in Caracas on 23rd November 1987, shall terminate and cease to be effective from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (1) of this Article.

Article 29

Termination

This Convention shall remain in force indefinitely until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, by giving notice of termination, through the diplomatic channel, at least six months before the end of any calendar year beginning after the end of the calendar year in which the Convention enters into force. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains 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;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (b) in Venezuela:
 - in respect of the income tax and the business assets tax, for any year beginning on or after 1st January in the calendar year next following that in which the notice is given.

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

Done in duplicate at Caracas this 11th day of March, 1996 in the English and Spanish languages, both texts being equally authoritative.

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

Fraser

For the Government of the Republic of
Venezuela:

Dr. Miguel Angel Burelli Rivas

PART II

EXCHANGE OF NOTES

Caracas

11th March 1996

Your Excellency

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Venezuela for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which is being signed today and to make on behalf of the Government of the Republic of Venezuela the following proposal:

Article 4

It is understood that the definition of resident in Article 4 of the Convention does not exclude from the enjoyment of benefits under the Convention residents of Venezuela merely because at the time of conclusion of this Convention Venezuela uses the territorial principle in its system of taxation. It is further understood that, in the event that Venezuela adopts a worldwide system of taxation, the term will not include any person who is liable to tax in that State in respect only of income from sources in that State.

Articles 7 and 14

It is understood that income from ordinary leasing activities and payments received as consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be taxed in accordance with the provisions of Article 7 or Article 14 as the case may be. Notwithstanding the preceding sentence, it is recognised that if leasing activities include to a substantial extent a transfer of technological know-how, the payments paid as a consideration for such a transfer shall to that extent be considered as “payments for the use of, or the right to use, industrial, commercial or scientific experience” referred to in sub-paragraph (b) of paragraph (3) of Article 12.

Article 8

It is understood that the provisions of paragraph (4) of Article 8 of the Convention shall apply to the profits of a resident of one of the Contracting States derived from the operation of ships which serve any port situated in the territory of the other Contracting State.

If the following proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland I have the honour to suggest that the present Note and Your Excellency’s reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which will enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Dr. Miguel Angel Burelli Rivas

His Excellency the Minister of Foreign Affairs

Caracas

11th March 1996

Your Excellency

I am in receipt of your note dated 11th March 1996 which states as follows:

“I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Venezuela for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income

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and Capital Gains which is being signed today and to make on behalf of the Government of the Republic of Venezuela the following proposal:

Article 4

It is understood that the definition of resident in Article 4 of the Convention does not exclude from the enjoyment of benefits under the Convention residents of Venezuela merely because at the time of conclusion of this Convention Venezuela uses the territorial principle in its system of taxation. It is further understood that, in the event that Venezuela adopts a worldwide system of taxation, the term will not include any person who is liable to tax in that State in respect only of income from sources in that State.

Article s 7 and 14

It is understood that income from ordinary leasing activities and payments received as consideration for technical services, including studies or surveys of a scientific, geological or technical nature, or for consultancy or supervisory services shall be taxed in accordance with the provisions of Article 7 or Article 14 as the case may be. Notwithstanding the preceding sentence, it is recognised that if leasing activities include to a substantial extent a transfer of technological know-how, the payments paid as a consideration for such a transfer shall to that extent be considered as “payments for the use of, or the right to use, industrial, commercial or scientific experience” referred to in sub-paragraph (b) of paragraph (3) of Article 12.

Article 8

It is understood that the provisions of paragraph (4) of Article 8 of the Convention shall apply to the profits of a resident of one of the Contracting States derived from the operation of ships which serve any port situated in the territory of the other Contracting State.

If the following proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland I have the honour to suggest that the present Note and Your Excellency’s reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which will enter into force at the same time as the entry into force of the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.”

The foregoing proposal being acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to confirm that Your Excellency’s Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

Fraser

His Excellency the Minister of State
for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order)

The Convention with Venezuela is set out in Part I of the Schedule to this Order.

The Convention provides for business profits not arising through a permanent establishment to be taxed only in the country of the taxpayer's residence. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Articles 5 and 7).

Income and gains from immovable property may be taxed in the country in which the property is situated (Articles 6 and 13).

Profits and gains from international shipping and air transport are generally to be taxed only in the residence state of the operator. However profits derived from the transport of hydrocarbons by ship may be taxed in the other Contracting State (Articles 8 and 13).

The Convention includes rules for determining taxable profits when a company in one country is related to a company in the other (Article 9).

The rate of tax imposed in the country of source on dividends derived and beneficially owned by a resident of the other country shall not, in general, exceed 10 per cent. of the gross amount of the dividends. If the beneficial owner is a company which controls at least 10 per cent. of the voting power in the company paying the dividends, the dividends will generally be taxable only in the recipient's country of residence (Article 10).

The rate of tax imposed in the country of source on interest derived by a resident of the other country is not to exceed 5 per cent. of the gross amount flowing to the other country provided the recipient is the beneficial owner of the interest. Certain categories of interest will be exempt from tax in the source state (Article 11).

The rate of tax imposed in the country of source on royalties is limited to 7 per cent. of the gross amount in respect of copyright of literary or artistic work and 5 per cent. of the gross amount in respect of patents, trade marks, industrial, commercial or scientific experience; where, in either case, the recipient is the beneficial owner of the royalties (Article 12).

Each country may generally tax capital gains in accordance with its domestic law. Gains arising from the disposal of the assets of a permanent establishment or a fixed base which the taxpayer has in the other country may be taxed in that other country (Article 13).

The earnings of temporary business visitors and some other individuals are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence (Articles 14 and 15). Fees received by a resident of one country in his capacity as a director of a company resident in the other country may be taxed in that other country (Article 16). Income derived from the activities of artistes and sportsmen may be taxed in the country in which those activities are performed (Article 17).

Occupational pensions and annuities are to be taxed only in the recipient's country of residence (Article 18) while government service remuneration is normally to be taxed only by the paying Government (Article 19). There are separate provisions for diplomatic or consular officials (Article 27). Certain payments made to visiting students and business apprentices are generally exempt from tax in the country visited (Article 20).

Other income not specified in the Convention will generally be taxed only by the country of which the beneficial owner is a resident (Article 21).

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Where income continues to be taxable in both countries, relief will be given, in effect, in accordance with the laws of each country. The credit to be given in the United Kingdom for tax imposed in Venezuela includes credit for tax spared under certain provisions of Venezuelan law (Article 22).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 23) and provisions whereby the United Kingdom ensures that it retains its right to tax a United Kingdom resident member of a Venezuelan resident partnership (Article 24).

There are also provisions for consultation to resolve difficulties in the application or interpretation of the Convention (Article 25) and for exchanges of information between the taxation authorities of the two countries (Article 26).

The Exchange of Notes comprising Part II of the Schedule clarifies the intended interpretation of certain parts of the Convention.

The Convention will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect in the United Kingdom in respect of corporation tax from 1st April in the following calendar year; and from 6th April that year for income tax and capital gains tax (Article 28). The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.