

1973 No. 1329

INCOME TAX**The Double Taxation Relief (Taxes on Income) (Jamaica)
Order 1973***Laid before the House of Commons in draft**Made - - - 27th July 1973*

At the Court at Buckingham Palace, the 27th day of July 1973

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972(b) and section 39 of the Finance Act 1965(c), as amended, 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) (Jamaica) Order 1973.

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 Jamaica 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 Jamaica; and
- (b) it is expedient that those arrangements should have effect.

W. G. Agnew.

(a) 1970 c. 10.
(c) 1965 c. 25.

(b) 1972 c.41.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF JAMAICA 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 Jamaica:

Desiring to conclude an agreement 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:

ARTICLE 1

Taxes covered

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

- (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) the income tax;
 - (ii) the capital gains tax; and
 - (iii) the corporation tax
(hereinafter referred to as “United Kingdom tax”);
- (b) in Jamaica:
 - (i) the income tax (including surtax);
 - (ii) the company profits tax, the additional company profits tax and the investment company profits tax; and
 - (iii) the transfer tax
(hereinafter referred to as “Jamaican tax”).

(2) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes by either Government or by the Government of any territory to which the present Agreement is extended under Article 28.

ARTICLE 2

General definitions

(1) In this Agreement, 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 sea-bed and sub-soil and their natural resources may be exercised;
- (b) (i) the term “Jamaica” means the island of Jamaica, the Morant Cays, the Pedro Cays and their Dependencies; and
 - (ii) when used in a geographical sense the term “Jamaica” includes the territorial waters thereof including any area outside such territorial waters which in accordance with international law and the laws of Jamaica is an area within which the rights of Jamaica with respect to the sea-bed and sub-soil and their natural resources may be exercised;
- (c) the terms “one of the territories” and “the other territory” mean the United Kingdom or Jamaica as the context requires;
- (d) 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 Jamaica, the Commissioner of Income Tax or his authorised representative; and in the case of any territory to which this Agreement is ex-

tended under Article 28, the competent authority for the administration in such territory of the taxes to which this Agreement applies;

- (e) the term "tax" means United Kingdom tax or Jamaican tax, as the context requires;
- (f) the term "person" includes any body of persons, corporate or not corporate;
- (g) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (h) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country;
- (i) the term "national" means:
 - (i) in relation to the United Kingdom
 - (aa) any citizen of the United Kingdom and Colonies who derives his status as such from his connection with the United Kingdom;
 - (bb) any legal person, partnership or association deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Jamaica
 - (aa) any individual who is a citizen of Jamaica;
 - (bb) any legal person, association or other entity deriving its status as such from the law of Jamaica.

(2) Where under this Agreement any income is exempt from tax or is taxed at a reduced rate in one of the territories and that income is subject to tax in the other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption or reduction of tax to be allowed under this Agreement 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 Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Government relating to the taxes which are the subject of the present Agreement.

ARTICLE 3

Residence

(1) For the purposes of this Agreement the terms "resident of the United Kingdom" and "resident of Jamaica" 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 Jamaica for the purposes of Jamaican tax.

(2) Where by reason of the provisions of paragraph (1) above an individual is a resident of both territories, then his status shall be determined in accordance with the following rules:

- (a) 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");
- (b) 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;
- (c) 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;
- (d) 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.

(3) Where by reason of the provisions of paragraph (1) 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.

(4) 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 Jamaica, as the context requires.

(5) The terms “United Kingdom enterprise” and “Jamaican 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 Jamaica, and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Jamaican enterprise, as the context requires.

ARTICLE 4

Permanent establishment

(1) For the purposes of this Agreement the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term “permanent establishment” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) premises used as a sales outlet;
- (g) a warehouse, in relation to a person providing storage facilities for others;
- (h) a mine, quarry or other place of extraction of natural resources;
- (i) a building site or construction or assembly project which exists for more than six months.

(3) The term “permanent establishment” shall not be deemed to include:

- (a) the use of facilities solely for the purpose of 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 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 for collecting information, for the enterprise;
- (e) 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.

(4) An enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory—

- (a) if it carries on the activity of providing the services within that other territory of public entertainers or athletes referred to in Article 16;
- (b) if it maintains a dredge or other construction equipment within that other territory for a period or periods aggregating in the whole more than six months in any twelve month period.

(5) 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 paragraph (7) applies—shall be deemed to be a permanent establishment of the enterprise in the first-mentioned territory—

- (a) 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;

(b) if he maintains in that first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders or makes deliveries on behalf of the enterprise.

(6) An insurance enterprise of one of the territories shall, except in regard to re-insurance, be deemed to have a permanent establishment in the other territory if it collects premiums in that other territory or insures risks situated therein through an employee or agent but not including any such agent as is mentioned in paragraph (7).

(7) 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, a general commission agent or any agent of an independent status, where such persons are acting in the ordinary course of their business and their activities are not devoted wholly or almost wholly to the business of that enterprise.

(8) 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.

ARTICLE 5

Business profits

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

(2) The industrial or commercial profits of a Jamaican 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) In determining the industrial or commercial profits of a permanent establishment situated in one of the territories, there shall be allowed as deductions all expenses which would be deductible under the law of that territory if the permanent establishment were an independent enterprise in so far as such expenses are reasonably allocable to the permanent establishment including executive and general administration expenses so deductible and allocable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

(5) 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.

(6) The term "industrial or commercial profits" means income derived from the conduct of a trade or business, but it does not include dividends, interest or royalties (as defined in Articles 8, 9 and 10) other than dividends, interest or royalties effectively connected with a trade or business carried on through a permanent establishment which an enterprise of one of the territories has in the other territory.

(7) Where industrial or commercial profits include items of income which are dealt with separately in other Articles of this Agreement, the provisions of those Articles shall except as otherwise provided therein, not be affected by the provisions of this Article.

(8) Nothing in this Article shall apply to either territory to prevent the operation in the territory of any provisions of its law relating specifically to the taxation of any person who carries on a business of any form of insurance. Provided that if the law in force in either territory at the date of signature of this Agreement relating to the taxation of such persons is varied (otherwise than in minor respects so as not to affect its general character) the Contracting Governments shall consult with each other with a view to agreeing to such amendment of this paragraph as may be necessary.

(9) 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 Article 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 Article.

ARTICLE 6

Associated enterprises

Where—

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the 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 7

Shipping and air transport

A resident of one of the territories shall be exempt from tax in the other territory on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in that other territory.

ARTICLE 8

Dividends

(1)(a) Dividends derived from a company which is a resident of the United Kingdom by a resident of Jamaica may be taxed in Jamaica.

(b) Where a resident of Jamaica is entitled to a tax credit in respect of such a dividend under Paragraph (2) of this Article tax may also be charge in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(c) Save as aforesaid dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Jamaica shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Jamaica who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (3) of this Article and provided he is the beneficial owner of the dividends, be entitled to the tax credit

in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax.

(3) Paragraph (2) of this Article shall not apply where the beneficial owner of the dividend is a company which

(a) either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power of the company paying the dividend; or

(b) is entitled in computing the amount of credit to be allowed against Jamaican tax in respect of tax payable in the United Kingdom to credit in respect of the United Kingdom tax payable on the profits out of which the dividend is paid.

For the purpose of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends derived from a company which is a resident of Jamaica by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Jamaica but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed—

(a) 22½ per cent of the gross amount of the dividends if the beneficial owner is a company and it controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;

(b) in all other cases 15 per cent of the gross amount of the dividends.

(5) The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(6) The term "dividends" as used in this Article means income from shares, or any other item (other than interest or royalties relieved from tax under the provisions of Article 9 or the provisions of Article 10 of this Agreement (which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company).

(7) The provisions of paragraphs (1) and (2), or as the case may be, paragraph (4) of this Article shall not apply where a resident of one of the territories has in the other territory a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment. In such a case the provisions of Article 5 shall apply.

(8) Where a company which is a resident of one of the territories derives profits or income from the other territory, that other territory may not impose any tax on the dividends paid by the company to persons who are not residents of that other territory, or subject the company's undistributed profits to a tax on undisturbed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other territory.

ARTICLE 9

Interest

(1) Interest arising in one of the territories which is derived and beneficially owned by a resident of the other territory may be taxed in that other territory.

(2) However, subject to the provisions of paragraphs (3) and (4) of this Article, such interest may also be taxed in the territory in which it arises, and according to the law of that territory, but the tax so charged shall not exceed 12½ per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of Article 5, interest arising in Jamaica which is derived and beneficially owned by a resident of the United Kingdom shall be exempt from Jamaican tax 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.

(4) Interest arising in one of the territories shall be exempt from tax in that territory if it is derived and beneficially owned by the Government of the other territory or by an instrumentality of that other territory which is not subject to tax in that other territory on its income. The term "instrumentality" as used in this paragraph means any agency or entity created or organised by either Contracting Government in order to carry out government functions.

(5) The term "interest" as used in this Article means income from Government securities, bonds or debentures, 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 law of the territory in which the income arises.

(6) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of one of the territories has in the other territory in which the interest arises a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 5 shall apply.

(7) Interest shall be deemed to arise in a territory where the payer is the Government of that territory or a political sub-division thereof, a local authority or a resident of that territory. Where, however, the person paying the interest, whether he is a resident of one of the territories or not, has in one of the territories a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the territory in which the permanent establishment is situated.

(8) The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest—

(a) does not bear tax in respect thereof in the territory of which it is a resident; and

(b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(9) Where, owing to 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, 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 beneficial owner 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 law of each territory, due regard being had to the other provisions of this Agreement.

(10) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 10

Royalties

(1) Royalties arising in one of the territories which are derived and beneficially owned by a resident of the other territory may be taxed in that other territory.

(2) However, such royalties may also be taxed in the territory in which they arise and according to the law of that territory, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(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, any copyright of literary, artistic or scientific work (including cinematograph films, and films, or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret

formula or process, or for information concerning industrial, commercial or scientific experience.

(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 one of the territories, has in the other territory in which the royalties arise a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 5 shall apply.

(5) Royalties shall be deemed to arise in one of the territories where the payer is the Government of that territory or a political sub-division thereof, a local authority or a resident of that territory. Where, however, the person paying the royalties, whether he is a resident of one of the territories or not, has in one of the territories a permanent establishment in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment, then the royalties shall be deemed to arise in the territory in which the permanent establishment is situated.

(6) Where, owing to 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, having regard to the use, right or information for which they are paid, exceeds 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 that case, the excess part of the payments shall remain taxable according to the law of each territory, due regard being had to the other provisions of this Agreement.

ARTICLE 11

Management fees

(1) Management fees arising in one of the territories and paid to a resident of the other territory may be taxed in that other territory.

(2) Management fees may also be taxed in the territory in which they arise and according to the law of that territory; but where the management fees are paid to a resident of the other territory who is subject to tax there in respect thereof the tax so charged in the territory in which those management fees arise shall not exceed 12½ per cent of the gross amount thereof.

(3) The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial or commercial advice, or management or technical services, or similar services or facilities, or hire of plant or equipment but it does not include payments for independent personal services mentioned in Article 19.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the management fees, being a resident of one of the territories, has in the other territory in which the management fees arise a permanent establishment with which the management fees are effectively connected. In such a case the provisions of Article 5 shall apply.

(5) If a resident of one of the territories who receives management fees which arise in the other territory and who is subject to tax in respect thereof in the first-mentioned territory so elects for any year of assessment, or financial year, the tax chargeable in respect of those management fees in the territory in which they arise shall be calculated as if he had a permanent establishment in that territory and as if those management fees were taxable in accordance with Article 5 as industrial or commercial profits attributable to that permanent establishment.

(6) Management fees shall be deemed to arise in one of the territories when the payer is the Government of that territory or a political sub-division thereof, a local authority or a resident of that territory. Where, however, the person paying the management fees, whether he is a resident of one of the territories or not, has in one of the territories a permanent establishment in connection with which the obligation to pay the manage-

ment fees was incurred and the management fees are borne by that permanent establishment, then the management fees shall be deemed to arise in that territory.

(7) 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 management fees paid, having regard to the advice, services or use for which they are paid, exceed 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 law of each territory, due regard being had to the other provisions of this Agreement.

ARTICLE 12

Immovable property

(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 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 13

Governmental functions

(1) Remuneration, including pensions, paid by one of the Contracting Governments to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government, 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 Article shall not apply to payments in respect of services rendered in connexion with any trade or business carried on by either of the Contracting Governments for purposes of profit.

ARTICLE 14

Pensions

(1) Any pension (other than a pension of the kind referred to in paragraph (1) of Article 13) and any annuity, derived from sources within Jamaica by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Jamaican tax.

(2) Any pension (other than a pension of the kind referred to in paragraph (1) of Article 13) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Jamaica and subject to Jamaican 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 15

Employments

(1) Subject to the provisions of Articles 13, 14, 17 and 18, 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 year of assessment 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 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 of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 16

Artistes and athletes

Notwithstanding anything contained in this Agreement, 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 17

Professors, teachers and research workers

(1) An individual who is a resident of the territory of one of the Contracting Governments at the time he becomes temporarily present in the territory of the other Contracting Government, at the invitation of that other Contracting Government or of a university or other recognized educational institution in the territory of that other Contracting Government, for the primary purpose of teaching or engaging in research, or both, at a university or other recognized educational institution shall be exempt from tax by that other Contracting Government on his income from personal services for teaching or research at such university or educational institution, for a period not exceeding two years from the date of his arrival in the territory of that other Contracting Government.

(2) This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 18

Students

(1) An individual who is a resident of one of the territories at the time he becomes temporarily present in the other territory and who is temporarily present in the other territory for the primary purpose of—

- (a) studying in the other territory at a university or other recognized educational institution; or
- (b) securing training at a recognized educational institution required to qualify him to practise a profession or professional specialty; or
- (c) studying or doing research as a recipient of a grant, allowance, or award from a governmental, religious, charitable, scientific, literary or educational organization;

shall be exempt from tax in that other territory on:

- (i) gifts from abroad for the purpose of his maintenance, education, study, research, or training;
- (ii) the grant, allowance, or award; and
- (iii) income from personal services rendered in the other territory (other than any rendered by an articled clerk or other individual undergoing professional training to the person or partnership to whom he is articled or who is providing the training) provided that the income constitutes earnings reasonably necessary for his maintenance and education.

(2) The exemptions from tax provided under paragraph (1) of this Article shall apply only for such period of time as may reasonably or customarily be required to effectuate the purpose of the individual's visit but no individual shall be entitled to such exemptions for more than five years from the date of his arrival in the other territory.

ARTICLE 19

Independent personal services

(1) Where a resident of one of the territories derives income from the other territory in respect of professional services or other independent activities of a similar character he shall be subject to tax in that other territory but only in respect of such part of that income as is attributable to his services in that other territory. In determining the income attributable to such services, there shall be allowed as a deduction expenses incurred in the performance of those services including reasonable administrative and general expenses so incurred, whether in the territory in which the services are performed or elsewhere.

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

ARTICLE 20

Capital gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 12 may be taxed in the territory in which such property is situated.

(2) Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the territories has in the other territory, including such gains from the alienation of such a permanent establishment alone or together with the whole enterprise, may be taxed in the other territory.

(3) Notwithstanding the provisions of paragraph (1) of this Article, capital gains derived by a resident of one of the territories from the alienation of ships and aircraft

operated in international traffic and of movable property pertaining to the operation of such ships and aircraft shall be taxable only in that territory.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) of this Article which are subject to tax in the territory of which the alienator is a resident shall be taxable only in that territory.

(5) The provisions of paragraph (4) of this Article shall not affect the right of one of the territories to levy according to its own law a tax on capital gains from the alienation of any property derived by an individual who is a resident of the other territory and has been a resident of the first-mentioned territory at any time during the five years immediately preceding the alienation of the property.

(6) For the purposes of this Article the tax to which capital gains are subject includes the transfer tax mentioned in paragraph (1) of Article 1.

ARTICLE 21

Income not expressly mentioned

Any income not dealt with in the foregoing Articles 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 22

Recognized stock exchanges

(1) In determining for the purpose of Jamaican tax whether a company is an open company, the term "recognized stock exchange" shall include the Belfast Stock Exchange, the London Stock Exchange, the Midlands and Western Stock Exchange, the Northern Stock Exchange, the Provincial Brokers Stock Exchange and the Scottish Stock Exchange.

(2) In determining for the purpose of United Kingdom tax whether a company is a close company, the term "recognized stock exchange" shall include the Jamaica Stock Exchange.

(3) The term "recognized stock exchanges" shall also include any other stock exchange in either of the territories which the taxation authorities of the Contracting Governments agree should be regarded as a recognized stock exchange for the purposes of this Article.

ARTICLE 23

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) Jamaican tax payable under the laws of Jamaica and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Jamaica (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 Jamaican tax is computed.

(b) Where a company which is a resident of Jamaica 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 Jamaica tax for which credit may be allowed under sub-paragraph (a) of this paragraph) the Jamaica tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) For the purposes of paragraph (1) of this Article, the term "Jamaican tax payable" shall be deemed to include any amount which would have been payable as Jamaican tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

(a) any of the following provisions, that is to say:

- Section 28B of the Income Tax Law, 1954;
- Section 10(4) of the Motion Picture Industry (Encouragement) Law, as amended;
- Section 8(5) of the Pioneer Industries (Encouragement) Law, as amended;
- Section 6(3) of the Saint Andrew Mines (Encouragement) Law;
- Section 8(5) of the Textile Industry (Encouragement) Law, as amended;
- Part II and Part VI of the Industrial Incentives Law, 1956, as amended;
- Section 10 of the Export Industry Encouragement Law, 1956, as amended;
- Section 11 of the Export Industry Encouragement Law, 1956, as amended by the Export Industry Encouragement (Amendment) Act, 1968;
- Section 10(1)(a) of the Petroleum Refining Industry (Encouragement) Law, 1961;
- Section 3 of the Income Tax (Amendment) (No. 3) Act, 1965;
- Sections 9 and 10 of the Hotels (Incentives) Act, 1968;
- Sections 7 and 8 of the Resort Cottages (Incentives) Act, 1971 (31 of 1971);
- Sections 2 and 3 of the Income Tax (Amendment) No. 1 Act, 1972 (2 of 1972);
- Sections 7 and 8 of the Agricultural Incentives Act, 1972 (5 of 1972);

so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; and except to the extent that any of the said provisions (other than section 7(5) of the Hotels (Incentives) Act, 1968) has the effect of exempting or relieving a source of income for a period in excess of 10 years;

(b) any other provision which may subsequently be made granting exemption or reduction of tax which is agreed by the taxation authorities of the Contracting Governments 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.

Provided that where the relief is a relief accorded by the Export Industry (Encouragement) Law, 1956, it shall be taken into account for the purposes of this paragraph only in so far as it is effected by Section 8(5) of the Pioneer Industries (Encouragement) Law, as amended, or Part II of the Industrial Incentives Law, 1956, as amended, and if, and only if, the company qualifying for the relief could have been declared to be a company either (i) which was engaging in a pioneer industry under the provisions of Section 3 of the Pioneer Industries (Encouragement) Law, as amended, or (ii) which was an approved enterprise under the provisions of Section 4 of the Industrial Incentives Law, 1956, as amended.

(3) Subject to the provisions of the law of Jamaica regarding the allowance as a credit against Jamaican tax of tax payable in a territory outside Jamaica (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 Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom (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 Jamaican tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed.

Provided that United Kingdom tax payable on chargeable gains from sources

within the United Kingdom shall be allowed as a credit only against any Transfer Tax charged in Jamaica by reference to the same chargeable gains.

(b) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in Jamaica 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 the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(4) For the purposes of paragraphs (1) and (3) of this Article profits, income and chargeable gains owned by a resident of one of the territories which may be taxed in the other territory in accordance with this Agreement shall be deemed to arise from sources in that other territory.

(5) Where profits on which an enterprise of one of the territories has been charged to tax in that territory are also included in the profits of an enterprise of the other territory and the profits so included are profits which would have accrued to that enterprise of the other territory if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arms length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other territory of the enterprise of the first-mentioned territory and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (3) of this Article.

ARTICLE 24

Excluded companies

(1) This Agreement shall not apply to companies entitled to any special tax benefit under—

(a) the Jamaica International Business Companies (Exemption from Income Tax) Law 1956 (as in effect on 23rd August, 1956) as supplemented by the Jamaica International Business Companies (Exemption from Income Tax) Regulations 1964 (as in effect on 14th March, 1964);

(b) the International Finance Companies (Income Tax Relief) Act, 1971.

(2) This Agreement shall also not apply to companies entitled to any special tax benefit under any substantially similar law subsequently enacted by Jamaica in addition to, or in place of, the laws mentioned in paragraph (1).

ARTICLE 25

Exchange of information

The taxation authorities of the Contracting Governments shall on request 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 Agreement 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 Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a court or administrative tribunal) concerned with the assessment and collection of the taxes which are the subject of the present Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

ARTICLE 26

Consultation

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

ARTICLE 27

Non-discrimination

(1) The nationals of one of the territories shall not be subjected in the other territory 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 other territory in the same circumstances are or may be subjected.

(2) 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.

(3) Enterprises of one of the territories, the capital of which is wholly or partly owned or controlled, directly 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 the first-mentioned territory are or may be subjected.

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

(5) Nothing contained in this Article shall be construed—

(a) as obliging either of the Contracting Governments to grant to individuals not resident in its territory those personal allowances and reliefs for tax purposes which are by law available only to persons who are so resident; or

(b) as preventing Jamaica from charging a higher rate of income tax under Section 28(3A) of the Income Tax Law 1954 of Jamaica on a life assurance company which is a resident of the United Kingdom than on a Jamaicanized life assurance company; or

(c) as being applicable to any tax of a discriminatory nature which a Contracting Government may impose in pursuance of its programme of economic development and which the Contracting Governments agree should be excluded from the provisions of this Article;

Provided that any such tax as is mentioned in sub-paragraph (b) or (c) of this paragraph shall not be levied less favourably on a resident of the United Kingdom than on a resident of any other territory which is not a member country of the Caribbean Free Trade Association.

ARTICLE 28

Territorial extension

(1) This Agreement 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 this Agreement, 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 Governments in Notes to be exchanged for this purpose.

(2) The termination in respect of the United Kingdom or Jamaica of this Agreement under Article 30 shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of this Agreement to any territory to which the Agreement has been extended under this Article.

ARTICLE 29

Entry into force

(1) The present Agreement shall come into force on the date when the last of all such things shall have been done in the United Kingdom and Jamaica as are necessary to give the Agreement the force of law in the United Kingdom and Jamaica respectively,

and shall thereupon have effect—

(a) in the United Kingdom:

- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6th April, 1973; and
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1973;

(b) in Jamaica:

- (i) as respects income tax (including surtax); and
 - (ii) as respects company profits tax, the additional company profits tax and the investment company profits tax; and
 - (iii) as respects the transfer tax;
- for any year of assessment beginning on or after 1st January, 1973.

(2) Subject to the provisions of paragraph (3) of this Article, the Agreement between the Government of the United Kingdom and the Government of Jamaica signed at London on 2nd April, 1965(a), as amended by the Agreement signed at Kingston on 9th May, 1969(b) (hereinafter referred to as "the 1965 Agreement"), shall terminate and cease to be effective as respects taxes to which the present Agreement in accordance with paragraph (1) above applies.

(3) Where any provision of the 1965 Agreement would have afforded any greater relief from tax any such provision shall continue to have effect for any year of assessment or financial year beginning before the entry into force of this Agreement except that Articles 8, 9, 10 and 11 shall in any event have effect in respect of dividends, interest, royalties and management fees paid on or after 6th April, 1973.

ARTICLE 30

Termination

(1) The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the thirtieth day of June in any calendar year after the year 1974, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

(a) in the United Kingdom:

- (i) as respects 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; and
- (ii) as respects 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 Jamaica:

- (i) as respects income tax (including surtax);
 - (ii) as respects company profits tax, the additional company profits tax and the investment company profits tax; and
 - (iii) as respects transfer tax;
- for any year of assessment beginning on or after 1st January in the calendar year next following that in which the notice is given.

(2) The termination of the present Agreement shall not have the effect of reviving any Agreement or Arrangement abrogated by the present Agreement.

(a) S.I. 1965/1537 (1965 II, p. 4484). (b) S.I. 1969/1069 (1969 II, p. 3134).

In witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Kingston this 16th day of March, 1973.

For the Government of Jamaica:

David H. Coore.

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

John Hennings.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Agreement with Jamaica scheduled to this Order replaces the Agreement signed on 2nd April 1965 as amended by the Agreement signed on 9th May 1969.

Many of the provisions of the earlier Agreement have been retained with little or no amendment. The most important are those relating to the taxation of shipping and air transport profits, pensions, business profits and earnings from employment, the exchange of information between the taxation authorities of the two countries and the exclusion from the Agreement of certain Jamaican companies which enjoy special privileges under Jamaican law. Where income continues to be taxable in both countries credit will, as in the earlier Agreement, be given by the country of the taxpayer's residence for the tax payable in the country of origin of the income, including United Kingdom credit for tax spared under specified provisions of the Jamaican law.

The most significant changes are in the treatment provided for dividends, interest, royalties and management fees.

The treatment of dividends has been altered as a consequence of the introduction of the new United Kingdom corporation tax system and of changes in the Jamaican tax system. The Agreement provides that where a United Kingdom company pays a dividend to a resident of Jamaica other than a company which controls 10 per cent or more of the voting power in the paying company, the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. Dividends paid by Jamaican companies to residents of the United Kingdom will be subject to tax in Jamaica at rates not exceeding 22½ per cent, if the beneficial owner is a United Kingdom company which controls at least 10 per cent of the voting power in the company paying the dividends and 15 per cent in all other cases.

While the maximum rate of tax to be imposed by the country of source upon interest paid to a resident of the other country is to remain in general at 12½ per cent, interest paid to a resident of the United Kingdom in respect of loans made, guaranteed or insured by the United Kingdom Export Credits Guarantee Department is to be exempt from tax in Jamaica.

Royalties and management fees are to be subject to tax in the country of source at rates not exceeding 10 per cent and 12½ per cent respectively. The recipient of management fees is, however, to have the right to elect to have the tax in the country of source calculated as if they were industrial or commercial profits attributable to a permanent establishment.

Other changes include restrictions (which at present only affect United Kingdom life assurance companies) in the scope of the provisions safeguarding residents and enterprises of one country against discriminatory taxation in the other country, alterations in the rules for taxing professional earnings and more detailed provisions about visiting teachers and students. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment which the taxpayer has in the other country.

The Agreement is in general to take effect in the United Kingdom for 1973/74 and subsequent years as respects income tax and capital gains tax and as respects corporation tax for the financial year 1973/74 and subsequent years.

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