

STATUTORY INSTRUMENTS

1980 No. 1963

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(The Gambia) Order 1980***Laid before the House of Commons in draft**Made - - - - 17th December 1980*

At the Court at Buckingham Palace, the 17th day of December 1980

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 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 that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, 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) (The Gambia) Order 1980.

2. It is hereby declared—

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Republic of The Gambia 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 The Gambia; and
- (b) that it is expedient that those arrangements should have effect.

N. E. Leigh,

Clerk of the Privy Council.

(a) 1970 c. 10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).

SCHEDULE**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF THE GAMBIA 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 The Gambia;

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:

ARTICLE 1**Personal scope**

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

ARTICLE 2**Taxes covered**

- (1) The taxes which are the subject of this Convention are:
 - (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;(hereinafter referred to as "United Kingdom tax");
 - (b) in The Gambia:
 - the income tax;(hereinafter referred to as "Gambian tax");
- (2) This Convention shall also apply to any other taxes of a substantially similar character to those referred to in the preceding paragraph imposed in either territory after the date of signature of this Convention.

ARTICLE 3**General definitions**

- (1) In 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 under international law and the laws of the United Kingdom is 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) the term "The Gambia" means the territory of The Gambia including any area outside the territorial waters of The Gambia which under international law and the laws of The Gambia is an area within which the rights of The Gambia with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (c) the term "nationals" means:
 - (i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, providing in either

- case 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 The Gambia, all citizens of The Gambia as defined in the Constitution and other laws of The Gambia and all legal persons, partnerships and associations deriving their status from the law in force in The Gambia;
- (d) the terms “one of the territories” and “the other territory” mean the United Kingdom or The Gambia as the context requires;
- (e) the term “tax” means United Kingdom tax or Gambian tax, as the context requires;
- (f) the term “United Kingdom tax” means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of Article 2; the term “Gambian tax” means tax imposed by The Gambia being tax to which this Convention applies by virtue of the provisions of Article 2;
- (g) the term “person” comprises an individual, a company and any other body of persons;
- (h) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (i) the terms “United Kingdom enterprise” and “Gambian enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of The Gambia and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Gambian enterprise as the context requires;
- (j) 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 The Gambia the Central Government in the Ministry of Finance or its authorised representative.
- (2) As regards the application of this Convention by one of the territories any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that territory relating to the taxes which are the subject of this Convention.

ARTICLE 4

Fiscal domicile

- (1) For the purposes of this Convention, the term “resident of a territory” means, subject to the provisions of paragraph (2) of this Article, any person who, under the law of that territory, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The terms “resident of the United Kingdom” and “resident of The Gambia” shall be construed accordingly.
- (2) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both territories, then it shall be deemed to be a resident of the territory where its business is managed and controlled.

ARTICLE 5

Permanent establishment

- (1) For the purposes of this Convention, 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) a mine, quarry or other place of extraction of natural resources;
 - (g) a building site or construction, installation 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 or display 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 or display;
 - (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) 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 the provisions of paragraph (5) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.
- (5) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.
- (6) 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 6

Limitation of relief

Where under any provision of this Convention any person is relieved from tax in one of the territories on certain income if (with or without other conditions) that person is subject to tax in the other territory in respect of that income and that person is subject to tax in respect of that income in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the relief from tax to be allowed under this Convention in the first-mentioned territory shall apply only to the amounts so remitted or received.

ARTICLE 7

Industrial and commercial profits

(1) The profits of an enterprise of one of the territories shall be taxable only in that territory unless the enterprise carries on business in the other territory 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 territory but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of one of the territories carries on business in the other territory through a permanent establishment situated therein, there shall in each territory 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 at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment:

(a) there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses insofar as they are reasonably connected to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere;

(b) there shall not be allowed any deduction for payments by that permanent establishment to the head office or any other part of the enterprise, by way of royalties, fees or other similar payments for the use of patents or other rights or by way of commission for specific services or, (except in the case of a banking enterprise) by way of interest on moneys lent to the permanent establishment, unless such payments reimburse expenses actually incurred by the enterprise.

(4) In determining the profits of a permanent establishment amounts receivable by the permanent establishment from the head office or any other part of the enterprise by way of royalties, fees or other similar payments in return for the use of patents or other rights or by way of commission for specific services performed or, (except in the case of a banking enterprise) by way of interest on moneys lent to head office or any other part of the enterprise shall not be included in the receipts of the permanent establishment except insofar as they represent reimbursement of allowable expenses which it has actually incurred.

(5) Insofar as it has been customary in one of the territories, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total income of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that territory from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of this Article.

(6) 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.

(7) 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.

(8) Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Income from immovable property

- (1) Income from immovable property may be taxed in the territory in which such property is situated.
- (2) (a) The term “immovable property” shall, subject to the provisions of subparagraph (b) of this paragraph, be defined in accordance with the law of the territory in which the property in question is situated.
(b) The term “immovable property” 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 professional services.

ARTICLE 9

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 other territory; or
 - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a territory 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 10

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 the other territory.

ARTICLE 11

Dividends

- (1) (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of The Gambia may be taxed in The Gambia.
(b) Where a resident of The Gambia is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article, tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amounts or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
(c) Except as aforesaid dividends paid by a company which is a resident of the United Kingdom to a resident of The Gambia who is subject to tax in The Gambia on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of The Gambia 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 subject to tax in The Gambia on 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 that tax credit over his liability to United Kingdom tax.

(3) Paragraph (2) of this Article shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. 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 paid by a company resident in The Gambia to a resident of the United Kingdom may be taxed in the United Kingdom. If the recipient of the dividends is subject to tax in the United Kingdom in respect thereof they shall be exempt from any tax in The Gambia which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(5) 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 law of the territory of which the company making the distribution is a resident and also includes any other item of income (other than interest relieved from tax under Article 12 of this Convention) which, under the law of the territory of which the company paying the dividends is a resident, is treated as a dividend or distribution of a company.

(6) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then paragraphs (1) and (2) or, as the case may be, paragraph (4) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(7) The provisions of paragraphs (1) and (2) or, as the case may be, paragraph (4) of this Article shall not apply if the recipient of the dividends, being a resident of one of the territories, has in the other territory, of which the company paying the dividends is a resident, 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.

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

ARTICLE 12

Interest

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

(2) However, such interest may also be taxed in the territory in which it arises, and according to the law of that territory; but where such interest is 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 the interest arises shall not exceed 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in one of the territories and paid to the Government of the other territory, or a local authority thereof, the Central Bank of that other territory, or any agency wholly owned by that Government or local authority shall be exempt from tax in the first-mentioned territory. The competent authorities of the territories may determine by mutual agreement any other government institution to which this paragraph shall apply.

(4) 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.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient 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 7 shall apply.

(6) Interest shall be deemed to arise in a territory when the payer is the Government of that territory or a political subdivision 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.

(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 interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each territory, due regard being had to the other provisions of this Convention.

ARTICLE 13

Royalties

(1) Royalties arising in one of the territories and paid to 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 where such royalties 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 the royalties arise shall not exceed 12½ 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 the use of, or the right to use, industrial, commercial or scientific equipment, 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 recipient 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 7 shall apply.

(5) Royalties shall be deemed to arise in a territory where the payer is the Government of that territory or a political subdivision 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 recipient 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 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 Convention.

ARTICLE 14

Fees for technical services

(1) Fees for technical services arising in one of the territories and paid to a resident of the other territory may be taxed in that other territory.

(2) Notwithstanding the provisions of Article 7, such fees may also be taxed in the territory in which they arise and according to the law of that territory; but where such 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 the fees arise shall not exceed 15 per cent of the gross amount of the fees arising there.

(3) The term "fees for technical services" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical or consultancy nature.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the fees, being a resident of one of the territories, has in the other territory in which the fees arise a permanent establishment with which the fees are effectively connected. In such a case, the provisions of Article 7 shall apply.

(5) If a resident of one of the territories who receives fees for technical services 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, financial year or year of income, the tax chargeable in respect of those fees in the territory in which they arise shall be calculated as if he had a permanent establishment in the last-mentioned territory and as if those fees were taxable in accordance with Article 7 as profits attributable to that permanent establishment. Nothing in this paragraph shall prevent either territory from requiring the tax payable under paragraph (2) of this Article to be deducted from the fees at the time they are paid but any tax which has been so deducted and which is found to be excessive following the exercise of an election under the provisions of this paragraph shall be refunded to the recipient of the fees.

(6) Fees for technical services shall be deemed to arise in one of the territories when the payer is the Government of that territory or a political subdivision thereof, a local authority or a resident of that territory, and to the extent that they are attributable to services rendered in that territory. Where, however, the person paying the 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 fees was incurred and the fees are borne by that permanent establishment then the fees shall be deemed to arise in that territory to the extent that they are attributable to services rendered in that territory.

ARTICLE 15

Capital gains

- (1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 8 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 (2) 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 movable property pertaining to the operation of such ships and aircraft shall be taxable only in that territory.

ARTICLE 16

Employments and professional services

- (1) Profits or remuneration from services as an employee or from professional services performed in one of the territories derived by an individual who is a resident of the other territory may be taxed in the territory in which such services are performed.
- (2) Notwithstanding the provisions of paragraph (1) of this Article, an individual who is a resident of the United Kingdom shall not be taxed in The Gambia on profits or remuneration referred to in this Article if:
 - (a) he is present in The Gambia for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - (b) the services are rendered for, or on behalf of, a resident of the United Kingdom; and
 - (c) the profits or remuneration are not deducted in computing the profits of an enterprise subject to Gambian tax; and
 - (d) the profits or remuneration are subject to United Kingdom tax.
- (3) Notwithstanding the provisions of paragraph (1) of this Article, an individual who is a resident of The Gambia shall not be taxed in the United Kingdom on profits or remuneration referred to in this Article if:
 - (a) he is present in the United Kingdom for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - (b) the services are rendered for, or on behalf of, a resident of The Gambia; and
 - (c) the profits or remuneration are not deducted in computing the profits of an enterprise subject to United Kingdom tax; and
 - (d) the profits or remuneration are subject to Gambian tax.
- (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.
- (5) 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.
- (6) The provisions of this Article shall not apply to fees for technical services as defined in paragraph (3) of Article 14.

ARTICLE 17

Governmental functions

(1) Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a Gambian national without also being a United Kingdom national.

(2) Remuneration or pensions paid by, or out of funds created by The Gambia or a local authority thereof to any individual in respect of services rendered to the Government of The Gambia or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in The Gambia unless the individual is a United Kingdom national without also being a Gambian national.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 18

Pensions

(1) Subject to the provisions of paragraphs (1) and (2) of Article 17, any annuity or any pension or other similar remuneration paid to a resident of one of the territories from a source in the other territory in consideration of past employment or services in that other territory shall be taxable only in that other territory.

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

ARTICLE 19

Students

(1) An individual who is a resident of one of the territories at the time he becomes temporarily present in the other territory or who was a resident of the first-mentioned territory immediately before that time and who is temporarily present in the other territory solely:

- (a) as a student at a university, college, school or other similar recognised educational institution in that other territory; or
- (b) as a business or technical apprentice in that other territory; or
- (c) as the recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organisation for the purpose of study or research;

shall be exempt from tax in that other territory on all remittances made from abroad for the purpose of his maintenance, education, study, research or training.

(2) The benefits of this Article shall extend only for such period of time as may reasonably or customarily be required to complete the education or training undertaken.

ARTICLE 20

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) Gambian tax payable under the laws of The Gambia and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within The Gambia 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 Gambian tax is computed.

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

- (b) In the case of a dividend paid by a company which is a resident of The Gambia 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 Gambian tax creditable under the provisions of sub-paragraph (a) of this paragraph) the Gambian tax payable by the 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 "Gambian tax payable" shall be deemed to include any amount which would have been payable as Gambian 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: Sections 16 and 17 of the Development Ordinance 1964 or Sections 16 and 17 of the Development Act 1973 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 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 relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Gambian tax was first granted in respect of that source.

(3) Subject to the provisions of the law of The Gambia regarding the allowance as a credit against Gambian tax of tax payable in a territory outside The Gambia (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 Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom shall be allowed as a credit against any Gambian tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed.

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

- (b) In the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of The Gambia and which controls directly or indirectly at least 10 per cent of the voting power in the United Kingdom company, the credit shall take into account (in addition to any United Kingdom tax creditable under the provisions of sub-paragraph (a) of this para-

graph) the United Kingdom tax payable by the 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 capital gains owned by a resident of one of the territories which may be taxed in the other territory in accordance with this Convention 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 arm's 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 21

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 nationals of that 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 similar enterprises of that other territory carrying on the same or similar 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 that first-mentioned territory are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either territory to grant to individuals not resident in that territory any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident, or to grant to individuals so resident any higher personal allowances for tax purposes which may be granted to citizens of that territory in respect of the education of their children outside the territory.

(5) In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 22

Mutual agreement procedure

(1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those territories, present his case to the competent authority of the territory 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 an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other territory, with a view to the avoidance of taxation not in accordance with the Convention.

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

ARTICLE 23

Exchange of information

The competent authorities of the Contracting Governments shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection, enforcement or prosecution in respect of taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 24

Territorial extension

(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of this Convention. 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 through diplomatic channels.

(2) Unless otherwise agreed by both Contracting Governments, the termination of this Convention shall terminate the application of this Convention to any territory to which it has been extended under the provisions of this Article.

ARTICLE 25

Entry into force

(1) This Convention shall come into force on the date when the last of all such things shall have been done in the United Kingdom and The Gambia as are necessary to give the Convention the force of law in the United Kingdom and The Gambia respectively, and shall thereupon have effect:

(a) in the United Kingdom of Great Britain and Northern Ireland:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1980;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1980;

(b) in The Gambia:

in respect of income tax, for any year of assessment beginning on or after 1 January 1980.

(2) The Arrangement which was made in 1947^(a) between the Government of the United Kingdom and the Government of The Gambia as amended by the Agreement signed at Bathurst on 1 April 1968 ^(b) (hereinafter referred to as "the Arrangement") shall terminate and cease to be effective in respect of taxes to which this Convention applies in accordance with paragraph (1) of this Article as from the date on which it so applies.

Provided that in a case where any provision of the said Arrangement would have afforded greater relief from tax than any corresponding provision of this Convention, the first-mentioned provision shall nevertheless continue to have effect:

- (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning before this Convention enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning before this Convention enters into force;
- (b) in The Gambia:
 - for any year of assessment beginning before this Convention enters into force.

ARTICLE 26

Termination

(1) This Convention shall remain in force until terminated by one of the Contracting Governments. Either Contracting Government may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1983. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 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 1 April in the calendar year next following that in which the notice is given;
- (b) in The Gambia:
 - in respect of income tax, for any year of assessment beginning on or after 1 January in the calendar year next following that in which such notice is given.

(2) The termination of this Convention shall not have the effect of reviving any agreement or arrangement terminated by this Convention.

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

Done in duplicate at London this twentieth day of May 1980.

For the Government of the United
Kingdom of Great Britain and North-
ern Ireland:

RICHARD LUCE

For the Government of the Republic of
The Gambia:

O. A. SECKA

(a) S.R. & O. 1947/2867.

(b) S.I. 1968/1099.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Convention with The Gambia scheduled to this Order replaces the Arrangement made in 1947 as amended by the Agreement signed on 1 April 1968.

Under the Convention shipping and air transport profits and certain trading profits not arising through a permanent establishment are to be taxed only in the country of the taxpayer's residence. Where an enterprise which is a resident of one country carries on business through a permanent establishment in the other, the profits of the enterprise which are attributable to that permanent establishment may be taxed in that other country. Government salaries and pensions are normally to be taxed by the paying Government only while other pensions paid in respect of an employment exercised in one country and arising from a source in that country are taxable only in that country. Certain payments made to visiting students and business apprentices are, subject to certain conditions, to be exempt from tax in the country visited. Income from immovable property may be taxed in the country in which the property is situated. Income from employments and professional services may, subject to certain exceptions, be taxed in the country in which the services are performed. Capital gains arising from the disposal of immovable property may be taxed in the country in which the property is situated. Capital gains from the disposal of movable property forming the whole or part of the assets of a permanent establishment may, except in the case of ships and aircraft operated in international traffic, be taxed in the country where the permanent establishment is situated.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. The credit to be given in the United Kingdom for tax payable in The Gambia is to include credit for tax spared under certain provisions of Gambian law.

The treatment of dividends takes account of the introduction of the imputation system of company taxation in the United Kingdom. Where a United Kingdom company pays a dividend to a resident of The Gambia (other than to a company which controls 10 per cent or more of the voting power in the paying company), the recipient will, subject to certain conditions, receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. Dividends paid by Gambian companies to residents of the United Kingdom will not, in general, be subject to any tax in The Gambia which is chargeable on dividends in addition to the tax chargeable on the profits or income of the paying company.

The maximum rate of tax to be imposed by the country of source upon interest and royalties paid to a resident of the other country is, in general, not to exceed 15 per cent and 12½ per cent respectively. Interest received in either country by the Government, a local authority, the Central Bank or any agency wholly owned by the Government or a local authority will be exempt from tax in the country of source.

The rate of tax in the country of source on fees for technical services flowing to the other country is generally not to exceed 15 per cent. However the recipient of the fees has the right to elect to have the tax in the country of source calculated as if they were profits attributable to a permanent establishment.

There are also provisions for safeguarding residents of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the competent authorities of the two countries.

The Convention is to take effect in the United Kingdom for the year of assessment or financial year beginning in April 1980 and for subsequent years. There is a transitional provision which provides that, where the existing Arrangement would afford greater relief from tax than the new Convention, the existing Arrangement shall continue to have effect for any year of assessment or financial year beginning before the entry into force of the Convention.

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