

1987 No. 2053

INCOME TAX

The Double Taxation Relief (Taxes on Income)
(Belgium) Order 1987

Made - - - - 26th November 1987

At the Court at Buckingham Palace, the 26th day of November 1987

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 said 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) (Belgium) Order 1987.
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 Kingdom of Belgium 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 Belgium;
 - (b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of Belgium concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
 - (c) that it is expedient that those arrangements should have effect.

G. I. de Deney
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), section 10 of the Capital Gains Tax Act 1979 (c.14) and section 70 of the Finance Act 1987 (c.16).

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF BELGIUM 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 Kingdom of Belgium;

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 Contracting States.

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;
 - (iii) the petroleum revenue tax; and
 - (iv) the capital gains tax;
- (hereinafter referred to as "United Kingdom tax");

(b) in Belgium:

- (i) the individual income tax (*l'impôt des personnes physiques—de personenbelasting*);
- (ii) the corporate income tax (*l'impôt des sociétés—de vennootschapsbelasting*);
- (iii) the income tax on legal entities (*l'impôt des personnes morales—de rechtspersonenbelasting*);
- (iv) the income tax on non-residents (*l'impôt des non-residents—de belasting der niet-verblijfhouders*);

including the prepayments, the surcharges on these taxes and prepayments, and the supplements to the individual income tax;

(hereinafter referred to as "Belgian tax").

(2) The Convention shall also apply to any identical or substantially similar taxes which are imposed by a Contracting State or a political subdivision or a local authority thereof after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

General definitions

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

- (a) the term "United Kingdom", when used in a geographical sense, 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 subsoil and their natural resources may be exercised;
- (b) the term "Belgium", when used in a geographical sense, means the national territory, the territorial sea and any area adjacent to the territorial sea of Belgium within which in

- accordance with international law the sovereign rights of the Kingdom of Belgium with respect to the sea-bed and subsoil and their natural resources may be exercised;
- (c) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Belgium, as the context requires;
 - (d) the term “tax” means United Kingdom tax or Belgian tax, as the context requires;
 - (e) the term “person” comprises an individual, a company and any other body of persons;
 - (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “national” means:
 - (i) in relation to the United Kingdom, any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Belgium, any individual possessing the nationality of Belgium and any legal person, partnership or association deriving its status as such from the law in force in Belgium;
 - (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (j) the term “competent authority” means:
 - (i) in the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and
 - (ii) in Belgium, the Director General of Direct Taxation or his authorised representative;
 - (k) the term “political subdivision”, in relation to the United Kingdom, includes Northern Ireland.

(2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Residence

(1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; it also means, in the case of Belgium, companies (other than companies with share capital) which have elected to have their profits subjected to individual income tax. However, this term does not include any person who is liable to tax in a Contracting State in respect only of income from sources in that State.

(2) Where by reason of the provision of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State 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 State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

(4) Notwithstanding the provisions of this Article, the Government of a Contracting State, a

political subdivision or a local authority thereof, the Central Bank of a Contracting State or any agency (other than an agency with share capital) wholly owned by a Contracting State, a political subdivision or local authority thereof shall be deemed to be a resident of that Contracting State, whether or not it is liable to tax therein. The competent authorities of the Contracting States may determine by mutual agreement any other governmental institution to which this paragraph shall apply.

ARTICLE 5

Permanent establishment

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

(2) The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction or exploitation of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

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

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person—other than an agent of an independent status to whom paragraph (6) of this Article applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that paragraph.

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

(7) Nothing in this Article shall prevent an insurance enterprise of a Contracting State from being deemed to have a permanent establishment in the other Contracting State when it collects premiums there or insures risks situated there through an intermediary or agent established there—but not including any such agent as is mentioned in paragraph (6) of this Article unless he has, and habitually exercises, an authority to conclude contracts in the name of the enterprise.

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

ARTICLE 6

Income from immovable property

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 7

Business profits

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

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

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

ARTICLE 8

Shipping, inland waterways transport and air transport

(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(3) If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

(4) Where profits within paragraph (1) of this Article are derived by an enterprise from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in the State in which the place of effective management of that enterprise is situated.

ARTICLE 9

Associated enterprises

(1) Where

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

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

(2) Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the items so included comprise income, deductions, receipts or outgoings which would have been attributed to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then the competent authorities of the Contracting States may consult together with a view to reaching an agreement on the adjustment of profits or losses in both Contracting States.

ARTICLE 10

Dividends

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

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but if the beneficial owner of the dividends is a resident of the other State, the tax so charged shall not exceed:

- (a) 5 per cent. of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 25 per cent. of the voting power in the company paying the dividends;
- (b) 10 per cent. of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) As long as an individual resident in the United Kingdom is entitled under United Kingdom law to a tax credit in respect of dividends paid by a company which is resident in the United Kingdom, paragraph (2) of this Article shall not apply to dividends derived from a company which is a resident of the United Kingdom by a resident of Belgium. In these circumstances the following provisions of this paragraph shall apply:

- (a) (i) Where a resident of Belgium is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph tax may also be charged 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 20 per cent.
- (ii) Where a resident of Belgium is entitled to a tax credit in respect of such a dividend under sub-paragraph (c) of this paragraph tax may also be charged 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 5 per cent.
- (iii) Except as provided in sub-paragraphs (a)(i) and (a)(ii) of this paragraph dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Belgium shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

- (b) A resident of Belgium who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraphs (c) and (d) of this paragraph and provided he is the beneficial owner of the dividend, 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 that dividend, and to the payment of any excess of that tax credit over his liability to tax in the United Kingdom.
- (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the recipient of the dividend is, or is associated with, 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. In these circumstances a company which is a resident of Belgium and receives a dividend from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividend and subject to the provisions of sub-paragraph (d) of this paragraph, be entitled to a tax credit equal to one half of the tax credit to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of that tax credit over its liability to United Kingdom tax. For the purposes of this sub-paragraph, two companies shall be deemed to be associated if one controls, directly or indirectly, more than 50 per cent. of the voting power in the other company, or if a third company controls more than 50 per cent. of the voting power in both of them.
- (d) (i) The provisions of neither sub-paragraph (b) nor sub-paragraph (c) of this paragraph shall apply unless the recipient of a dividend shows (if required to do so by the competent authority of the United Kingdom on receipt of a claim by the recipient to have the tax credit set against United Kingdom income tax chargeable on him or to have the excess of the credit over that income tax paid to him) that the shareholding in respect of which the dividend was paid was acquired by the recipient for bona fide commercial reasons or in the ordinary course of making or managing investments and it was not the main object nor one of the main objects of that acquisition to obtain entitlement to the tax credit referred to in sub-paragraph (b) or sub-paragraph (c), as the case may be.
- (ii) Belgium may, on or before 30 June in any calendar year, give the United Kingdom, through the diplomatic channel, notice of termination of this sub-paragraph and, in such event, it shall cease to have effect in relation to dividends paid on or after 6 April in the calendar year next following that in which such notice is given.

(4) The term "dividends" as used in this Article means income from shares, jouissance shares or jouissance rights, mining shares, founders' shares or other rights participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the taxation law of the Contracting State of which the company making the distribution is a resident; it includes, in the case of a company other than a company with share capital, which is a resident of Belgium, payments to members of the company by way of income on invested capital and, in the case of the United Kingdom, any item (other than interest or royalties relieved from tax under the provisions of Article 11 or Article 12 of this Convention) which, under the laws of the United Kingdom and in accordance with this Convention, is treated as a distribution of a company.

(5) The provisions of paragraphs (1), (2) or, as the case may be, (3) of this Article shall not apply if the recipient of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State, of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(6) Where a company is a resident of a Contracting State, the other Contracting State may not impose any tax on the dividends paid by the company to a resident of the first-mentioned State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State. The provisions of this paragraph shall not prevent that other State from taxing dividends related to a holding which is effectively connected with a permanent establishment or a fixed base operated in that other State by a resident of the first-mentioned State.

ARTICLE 11

Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the beneficial owner of the interest is a resident of the other State, the tax so charged shall not exceed 15 per cent. of the gross amount of the interest.

(3) 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 debt-claims and deposits of every kind as well as premiums on lottery bonds (*lots d'emprunts*) and all other income assimilated to income from money lent or deposited by the taxation law of the State in which the income arises, but does not include income dealt with in Article 10 of this Convention.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) Any provision in the laws of either Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a resident of the other Contracting State to be treated as a distribution by the company paying such interest. The preceding sentence shall not apply to interest paid to a company of one Contracting State in which more than 50 per cent. of the voting power is controlled, directly or indirectly, by a person or persons who are residents of the other Contracting State.

ARTICLE 12

Royalties

(1) Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) 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.

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

(4) Where, by reason of a special relationship between the payer and the beneficial owner, or between both of them and some other person, the amount of the royalties paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital gains

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

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

(3) Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) Gains from the alienation of any property other than that referred to in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14

Independent personal services

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

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

ARTICLE 15

Dependent personal services

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

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of 12 months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

ARTICLE 16

Directors' fees

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or other similar organ of a company which is a

resident of the other Contracting State may be taxed in that other State. In relation to remuneration of a director of a company derived from the company in respect of the discharge of day-to-day functions of a managerial or technical nature, the provisions of Article 15 of this Convention shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to "employer" were references to the company.

ARTICLE 17

Artistes and athletes

(1) Notwithstanding the provisions of Articles 14 and 15 of this Convention, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income derived from activities performed in a Contracting State by entertainers if the visit to that State is substantially supported by public funds of the other Contracting State or a political subdivision or a local authority thereof.

ARTICLE 18

Pensions

Subject to the provisions of paragraph (1) of Article 19 of this Convention, any pension and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

ARTICLE 19

Government service

(1) Remuneration, including pensions, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority may be taxed in that State. This provision shall not apply if the recipient of such income is a national of the other Contracting State without being also a national of the first-mentioned State.

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

ARTICLE 20

Students

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

ARTICLE 21

Offshore activities

(1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on offshore in a Contracting State in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources situated in that State (in this Article referred to as "offshore activities").

(2) An enterprise of a Contracting State which carries on offshore activities in the other

Contracting State shall, subject to paragraph (3) of this Article, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

(3) Profits from the transportation of supplies or personnel by a ship or aircraft to a location where offshore activities are being carried on, or from the operation of tugboats or anchor handling vessels in connection with such activities, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in that other State.

- (5)(a) Subject to sub-paragraphs (b) and (c) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities in the other Contracting State shall, to the extent that the duties are performed offshore in that other State, be taxable only in that other State.
- (b) Subject to sub-paragraph (c) of this paragraph, salaries, wages and similar remuneration derived in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to a location where offshore activities are being carried on, or in respect of an employment exercised aboard a tugboat or anchor handling vessel in connection with such activities, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (c) Sub-paragraphs (a) and (b) of this paragraph shall apply only where documentary evidence is produced which is satisfactory to the competent authority of the other Contracting State that tax has been paid in the Contracting State which has the sole right to tax the remuneration referred to in sub-paragraphs (a) and (b). Otherwise the domestic laws of the Contracting States relating to the taxation of such remuneration shall apply and double taxation, if any, shall be relieved in accordance with Article 23 of this Convention.

ARTICLE 22

Other income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, other than income paid out of trusts, shall be taxable only in that State.

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

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 (as it may be amended from time to time without changing the general principle hereof):

- (a) Belgian tax payable under the laws of Belgium and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Belgium (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 Belgian tax is computed;
- (b) in the case of income (other than loan interest) derived from a Belgian company (other than a company with share capital) by a member of that company the credit shall take into account the Belgian tax charged in respect of that income, whether charged on the company or on the member if:
- (i) the member's liability as a member of that company is unlimited, or
 - (ii) the member is a company which is a resident of the United Kingdom and which

owns not less than 10 per cent of the capital (other than loan capital) of the Belgian company;

- (c) in the case of a dividend paid by a company which is a resident of Belgium 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 Belgian company, the credit shall take into account (in addition to any Belgian tax creditable under sub-paragraph (a) of this paragraph) the Belgian tax payable by the company in respect of the profits out of which such dividend is paid.

(2) In the case of Belgium, double taxation shall be avoided as follows:

- (a) Where a resident of Belgium derives income which may be taxed in the United Kingdom in accordance with the provisions of this Convention, other than those of paragraph (2) of Article 10, of paragraphs (2) and (6) of Article 11 and of paragraph (4) of Article 12, Belgium shall exempt such income from tax but may, in calculating the amount of the tax on the remaining income of that resident, apply the rate of tax which would have been applicable if the income in question had not been exempted.
- (b) Where a resident of Belgium derives from sources within the United Kingdom:
- (i) dividends dealt with in accordance with paragraph (2) or paragraph (3) of Article 10 of this Convention, not exempted from Belgian tax in accordance with sub-paragraph (c) of this paragraph,
 - (ii) interest dealt with in accordance with paragraph (2) or paragraph (6) of Article 11 of this Convention, and
 - (iii) royalties dealt with in accordance with paragraph (4) of Article 12 of this Convention,

the fixed proportion in respect of foreign tax for which provision is made under Belgian law shall, under the conditions and at the rate provided for by such law, be allowed as a credit against Belgian tax relating to such income.

- (c) Where a company which is a resident of Belgium owns shares in a company which is a resident of the United Kingdom, the dividends paid thereon to the former company which have not been dealt with in accordance with paragraph (5) of Article 10 of this Convention shall be exempted in Belgium from the tax referred to in paragraph (1)(b)(ii) of Article 2 of this Convention, to the extent that exemption would have been accorded if the two companies had been residents of Belgium.
- (d) Where in accordance with Belgian law, losses of a Belgian enterprise attributable to a permanent establishment situated in the United Kingdom have been effectively deducted from the profits of that enterprise for its taxation in Belgium, the exemption provided for in sub-paragraph (a) of this paragraph shall not apply in Belgium to the profits of other chargeable periods attributable to that permanent establishment to the extent that those profits have also been relieved from tax in the United Kingdom by reason of compensation for the said losses.

(3) For the purposes of this Article profits or remuneration for personal (including professional) services performed in a Contracting State shall be deemed to be income from sources within that State, and the services of an individual whose services are wholly or mainly performed aboard a ship, boat or aircraft operated by a resident of a Contracting State shall be deemed to be performed in that State.

ARTICLE 24

Non-discrimination

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

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

(3) Nothing in this Article shall be construed as preventing Belgium:

- (a) from taxing the total amount of the profits attributable to a permanent establishment in Belgium of a company being a resident of the United Kingdom or of an association having its place of effective management in the United Kingdom at the rate of tax provided by the Belgian law, but this rate may not exceed the maximum rate applicable to the whole or a portion of the profits of companies which are residents of Belgium;
- (b) from imposing the movable property prepayment on dividends derived from a holding

which is effectively connected with a permanent establishment or a fixed base maintained in Belgium by a company which is a resident of the United Kingdom or by an association which has its place of effective management in the United Kingdom and is taxable as a body corporate in Belgium.

(4) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes, on account of civil status or family responsibilities or any other personal circumstances, which it grants to its own residents.

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

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

(7) The provisions of this Article shall apply to taxes of every kind and description.

ARTICLE 25

Mutual agreement procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together to consider measures to counteract improper use of the provisions of the Convention.

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

ARTICLE 26

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention, as well as for the prevention of fiscal evasion. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. Such persons or authorities shall use the information only for such purposes. These persons or authorities may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

ARTICLE 27

Members of diplomatic or permanent missions and consular posts

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

(2) The Convention shall not apply to international organisations, to organs or officials thereof or to members of diplomatic or permanent missions or consular posts of a third State, being present in a Contracting State and not subjected in that State to the same obligations in respect of taxes on income as are residents of that State.

ARTICLE 28

Miscellaneous rules

(1) Where under any provision of this Convention income from a source within Belgium is relieved from Belgian tax and, under the laws in force in the United Kingdom, an individual, in respect of such income, is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under the Convention in Belgium shall apply only to so much of the income as is remitted to or received in the United Kingdom.

(2) Subject to the provisions of paragraph (4) of this Article, individuals who are residents of Belgium shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(3) Subject to the provisions of paragraph (4) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Belgian taxation as Belgian nationals not resident in Belgium.

(4) Nothing in the Convention shall entitle an individual who is a resident of a Contracting State and whose income from the other Contracting State consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in paragraphs (2) and (3) of this Article for the purpose of taxation in that other State.

(5) The provisions of the Convention shall not limit the taxation in accordance with Belgian law of a company which is a resident of Belgium, in the event of the purchase of its own shares or in the event of the distribution of its assets.

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

ARTICLE 29

Entry into force

(1) Each of the Contracting States shall notify the other Contracting State of the completion of the procedures required by its law for the bringing into force of this Convention. The Convention shall enter into force on the fifteenth day after the date of the later of these notifications and shall have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April; and
 - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January;

- in the calendar year next following that in which the Convention enters into force;
- (b) in Belgium:
- (i) in respect of all tax due at source on income credited or payable on or after 1 January; and
 - (ii) in respect of all tax other than tax due at source on income of any chargeable period ending on or after 31 December;
- in the calendar year next following that in which the Convention enters into force.

(2) The Convention between Her Britannic Majesty in respect of the United Kingdom of Great Britain and Northern Ireland and His Majesty The King of the Belgians for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at London on 29 August 1967 shall terminate and cease to be effective in relation to any tax for any period for which this Convention has effect in accordance with paragraph (1) of this Article as respects that tax.

ARTICLE 30

Termination

(1) This Convention shall remain in force until denounced by a Contracting State. Either Contracting State may denounce the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year after the expiration of 5 years from the date of its entry into force. In such event, the Convention shall cease to have effect;

- (a) in the United Kingdom:
- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April; and
 - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January;
- in the calendar year next following that in which the notice is given.
- (b) in Belgium:
- (i) in respect of all tax due at source on income credited or payable on or after 1 January; and
 - (ii) in respect of all tax other than tax due at source on income of any chargeable period ending on or after 31 December;
- in the calendar year next following that in which the notice is given.

(2) The termination of this Convention shall not have the effect of reviving any treaty or arrangement abrogated by this Convention or by treaties previously concluded between the Contracting States.

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

Done in duplicate at Brussels this 1st day of June 1987 in the English, French and Dutch languages, all three texts being equally authoritative.

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

For the Government of the
Kingdom of Belgium:
Leo Tindemans

EXPLANATORY NOTE

(This note is not part of the Order)

The Convention with Belgium set out in the Schedule to this Order replaces the Convention signed on 29th August 1967 (S.I. 1970/636).

Provision is made for business profits not arising through a permanent establishment to be taxed only in the country of the taxpayer's residence. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Articles 5 and 7). Shipping and air transport profits are to be taxed only in the country in which the place of effective management is situated (Article 8). The Convention includes rules for determining taxable profits when a company in one country is related to a company in the other (Article 9).

The Dividends Article (Article 10) takes account of the imputation system of company taxation in the United Kingdom. Where a United Kingdom company pays a dividend to a Belgian company controlling 10 per cent or more of its voting power, the Belgian company receiving the dividend will be entitled to a tax credit equal to one half of the tax credit which would be payable to a United Kingdom resident individual less a sum of not more than 5 per cent of the aggregate amount of the dividend and the half tax credit. Where the recipient is an individual resident of Belgium or a Belgian company controlling less than 10 per cent of the voting power of the United Kingdom company, the tax credit payable will be equal to the tax credit which would be payable to a United Kingdom resident individual less a sum not exceeding 20 per cent of the aggregate of the dividend and the tax credit. The Article provides that entitlement to a tax credit may be withdrawn where the recipient of a dividend cannot show, if required to do so, that the shareholding was acquired for *bona fide* commercial reasons or in the ordinary course of making or managing investments and it was not the main object nor one of the main objects of that acquisition to obtain entitlement to the tax credit. The Dividends Article also provides that the rate of Belgian withholding tax on dividends paid to a United Kingdom company controlling at least 25 per cent of the voting power of the Belgian company paying the dividend will be limited to a maximum of 5 per cent. In all other cases the Belgian withholding tax will not be more than 10 per cent.

Interest may be taxed in the country in which it arises, but the rate will normally be limited to 15 per cent where the beneficial owner of the interest is a resident of the other country (Article 11). Royalties are, in general, to be taxed only in the country of the taxpayer's residence (Article 12). The earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence (Articles 14 and 15). Fees received by a resident of one country in his capacity as a director of a company resident in the other may be taxed in the latter country (Article 16). Income derived from the activities of artistes and athletes may be taxed in the country in which these activities are exercised (Article 17). Pensions, other than public service pensions, are to be taxed only in the country of the taxpayer's residence (Article 18). Public service salaries and pensions are normally to be taxed by the paying country only (Article 19). Payments made to visiting students and business apprentices are, in general, to be exempt from tax in the country visited (Article 20).

Income from immovable property and gains derived from such property may be taxed in the country in which the property is situated (Articles 6 and 13). Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence. Gains arising from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country may be taxed in the other country.

Special rules are included to cover income and profits from activities connected with offshore oil and gas exploration or exploitation (Article 21). Trading profits arising from such activities are deemed to arise through a permanent establishment or a fixed base and may therefore be taxed in the country in which the activities are carried on. Employees are, in general, to be taxed only in the country in which the employment is exercised. Different rules apply to supply vessels, tugboats and their crews.

Where income continues to be taxable in both countries, relief from double taxation

will be given by the country of the taxpayer's residence in respect of tax imposed by the other country (Article 23). There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 24). Provision is made for consultation and exchange of information between the taxation authorities of the two countries (Articles 25 and 26).

The Convention will enter into force fifteen days after both countries have notified each other of the completion of their legislative procedures and it will have effect in the following calendar year.