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STATUTORY INSTRUMENTS

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**1994 No. 3212**

**INCOME TAX**

**The Double Taxation Relief (Taxes on Income) (Mexico) Order 1994**

*Made - - - - 14th December 1994*

At the Court at Buckingham Palace, the 14th day of December 1994

Present,

The Queen's Most Excellent Majesty in Council

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

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

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Mexico) Order 1994.
2. It is hereby declared—
  - (a) that the arrangements specified in the Convention set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the Government of the United Mexican States 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 Mexico;
  - (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 Mexico 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.

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

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*R. P. Bulling*  
Deputy Clerk of the Privy Council

## SCHEDULE

### PART I

#### CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED MEXICAN STATES 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 United Mexican States;

Desiring to conclude a new 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 case of Mexico:

the income tax (el impuesto sobre la renta);

(hereinafter referred to as “Mexican tax”);

(b) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

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

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

#### *ARTICLE 3*

##### *General definitions*

(1) For the purposes of this Convention, unless the context otherwise requires:

(a) the term “Mexico” means the United Mexican States; when used in a geographical sense, it includes the territory of the United Mexican States; as well as the integrated parts of the Federation; the islands, including the reefs and cays in the adjacent waters; the islands of Guadalupe and Revillagigedo; the continental shelf and the seabed and submarine shelves

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of the islands, cays and reefs; the waters of the territorial seas to the extent and limits established by international law and the inland waters; and the air space of the national territory to the extent and upon the conditions established by international law;

- (b) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and sub-soil and their natural resources may be exercised;
- (c) the term “national” means:
  - (i) in relation to Mexico:
    - (a) any individual possessing the nationality of Mexico; and
    - (b) any legal person, partnership or association deriving its status as such from the law in force in Mexico;
  - (ii) 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;
- (d) the terms “a Contracting State” and “the other Contracting State” mean Mexico or the United Kingdom, as the context requires;
- (e) the term “person” comprises an individual, a company and any other body of persons, but does not include a partnership which is not treated as a body corporate for tax purposes in either Contracting State;
- (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (i) the term “competent authority” means, in the case of Mexico, the Ministry of Finance and Public Credit and, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative.

(2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

#### ARTICLE 4

##### *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; the term does not include any person who is liable to tax in that Contracting State only if he derives income or capital gains from sources therein.

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

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- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
- (d) in any other case, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

## ARTICLE 5

### *Permanent establishment*

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

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

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

(3) A building site or construction or installation or assembly project or supervisory activities in connection therewith, constitutes a permanent establishment only where such site, project or activities last for a period of more than six 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 in Mexico of a representative office of a bank where the activities of the representative office are limited by the law of Mexico to activities which are of a preparatory or auxiliary nature;

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(g) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (f) 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 (7) of this Article applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) Notwithstanding the preceding provisions of this Article, an insurance enterprise of a Contracting State shall, except with regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it insures risks situated therein through a person other than an agent of an independent status to whom paragraph (7) applies.

(7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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. However, if the activities of such an agent are carried out wholly or almost wholly for the enterprise and the conditions made or imposed between them in their commercial or financial relations differ from those which would have been made or imposed if this had not been the case, that agent shall not be considered to be an agent of an independent status for the purposes of this paragraph.

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

(3) As regards the application of paragraphs (1) and (2), income or profits attributable to a permanent establishment during its existence shall be taxable in the Contracting State in which that establishment is situated, even where the payment is deferred until after that permanent establishment has ceased to exist.

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

(5) Insofar as it has been customary in a Contracting State to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph (2) shall preclude that Contracting State 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 contained in this Article.

(6) Where a permanent establishment takes an active and substantial part in the negotiation and conclusion of contracts entered into by the enterprise, then, notwithstanding that other parts of the enterprise have also participated in those transactions, there shall be attributed to the permanent establishment such proportion of the profits of the enterprise arising out of those contracts as the contribution of the permanent establishment to those transactions bears to that of the enterprise as a whole. However, 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 of income or capital gains 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 and air transport*

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

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

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

where the rental, use, or demurrage referred to in subparagraphs (a) and (b) as the case may be is incidental to the operation of ships or aircraft in international traffic but do not include profits from:

- (i) any direct delivery of goods or merchandise to a consignee by inland surface transport;
- (ii) the inland surface transport of individuals; or
- (iii) the provision of accommodation.

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

#### ARTICLE 9

##### *Associated enterprises*

(1) Where:

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

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises may be included by a Contracting State in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such an adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

(3) A Contracting State shall not adjust the income or profits of a person in the circumstances referred to in paragraph (1) after the expiry of the time limits provided in its national laws.

(4) The provisions of paragraphs (2) and (3) shall not apply in the case of fraudulent or negligent conduct.

#### ARTICLE 10

##### *Dividends*

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State shall be taxable only in the other State.



(2) The provisions of paragraph (1) shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income (other than interest relieved from tax under the provisions of Article 11 of this Convention) which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the 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 case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

## ARTICLE II

### Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the interest where:
  - (i) the beneficial owner is a bank or an insurance company; or
  - (ii) the interest is derived from bonds and securities that are regularly and substantially traded on a recognised securities market;
- (b) 10 per cent of the gross amount of the interest if the beneficial owner is not a bank or an insurance company and the interest is:
  - (i) paid by a bank; or
  - (ii) paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of such machinery and equipment in connection with a sale on credit; and
- (c) 15 per cent of the gross amount of the interest in all other cases.

(3) Notwithstanding the provisions of paragraph (2), during a period of three years from the date on which the provisions of this Article have effect:

- (a) the rate of 10 per cent shall apply in place of the rate provided in sub-paragraph (a) of paragraph (2); and
- (b) the rate of 15 per cent shall apply in place of the rate provided in sub-paragraph (b) of paragraph (2).

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(4) Notwithstanding the provisions of paragraphs (2) and (3), interest referred to in paragraph (1) shall be taxable only in the Contracting State of which the beneficiary is a resident where:

- (a) that person is a Contracting State, a political subdivision, a local authority, the Banco de Mexico or the Bank of England;
- (b) the interest is paid by any of the entities mentioned in sub-paragraph (a);
- (c) the beneficial owner, being a resident of a Contracting State, is a pension fund approved for tax purposes by that Contracting State and provided that its income is generally exempt from tax in the Contracting State; or
- (d) the interest is paid in respect of a loan for a period of not less than three years made, guaranteed or insured, or a credit for such period extended, guaranteed or insured in the case of the United Kingdom by the Export Credits Guarantee Department, and in the case of Mexico, by Banco Nacional de Comercio Exterior, S.N.C., Banco Nacional de Obras y Servicios, S.N.C., and Nacional Financiera, S.N.C.

(5) The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, as well as all other income that is treated as income from money lent by the taxation law of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purposes of this Article.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(7) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, 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.

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

(9) 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 deem such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution or dividend by the company paying such interest. The preceding sentence shall not apply to interest paid to a company which is a resident of one of the Contracting States 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.

(10) The relief from tax provided for in paragraph (2) of this Article shall not apply if the beneficial owner of the interest is exempt from tax on such income in the Contracting State of which

he is a resident and sells or makes a contract to sell the holding from which such interest is derived within three months of the date he acquired the holding.

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

(12) For the purposes of paragraphs (2) and (3) of this Article, the term “recognised securities market” means:

- (a) in the case of Mexico, stock exchanges duly authorised under the terms of the Stock Market Law (Ley del Mercado de Valores) of January 2, 1975;
- (b) in the case of the United Kingdom, a stock exchange recognised in accordance with the terms of section 841 of the Income and Corporation Taxes Act 1988;
- (c) any other stock exchange agreed upon by the competent authorities of the Contracting States.

## ARTICLE 12

### *Royalties*

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

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

(3) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright, patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, and includes payments of any kind in respect of motion picture films and works on film, videotape, audio tape or other means of reproduction for use in connection with radio and television. The term “royalties” also includes gains derived from the alienation of any such right or property which are contingent on the productivity or use thereof.

(4) The provisions of paragraphs (1) and (2) 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 such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments

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shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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

### ARTICLE 13

#### *Capital gains*

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

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

- (a) shares deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or
- (b) an interest in a partnership or under a trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in subparagraph (a) above,

may be taxed in that other State.

(3) Gains from the alienation of movable property forming part of the business property of the 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 services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

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

(5) Gains from the alienation of the property or rights referred to in Article 12 of this Convention shall be taxable only in accordance with the provisions of that Article.

(6) In addition to gains taxable in accordance with the provisions of the preceding paragraphs of this Article, gains derived by a resident of a Contracting State from the alienation of stock, participation, or other rights in the capital of a company which is a resident of the other Contracting State may be taxed in that other State if the recipient of the gain, during the twelve month period preceding such alienation, had a participation, directly or indirectly, of at least 25 per cent in the capital of that company.

(7) Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(8) The provisions of paragraph (7) of this Article shall not affect the right of a Contracting State to levy according to its law a tax on capital gains from the alienation of any property derived by an individual who is resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

## ARTICLE 14

### *Independent personal services*

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) where he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) where his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; in that case only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

(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, 19 and 20 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 in any twelve month period commencing or ending in the fiscal year concerned;
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

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

## 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 supervisory board or, in the case of Mexico, in his capacity as administrator (administrador) or statutory supervisor (comisario) of a company which is a resident of that other Contracting State may be taxed in that other State.

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## ARTICLE 17

### *Artistes and sportsmen*

(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 a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State. The income referred to in the previous sentence shall include any income derived from the other State which is incidental to that resident's presence in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman 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 sportsman are exercised.

## ARTICLE 18

### *Pensions*

(1) Subject to the provisions of paragraph (2) of Article 19 of this Convention, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

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

## ARTICLE 19

### *Government service*

- (a) (1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) Notwithstanding the provisions of sub-paragraph (1)(a) of this Article, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

- (i) is a national of that State; or
- (ii) did not become a resident of that State solely for the purpose of rendering the services.

- (a) (2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) Notwithstanding the provisions of sub-paragraph (2)(a) of this Article, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that State.

(3) 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 first-mentioned State, provided that such payments arise from sources outside that State.

## ARTICLE 21

### *Other income*

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

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

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and having their sources in the other Contracting State may also be taxed in that other State.

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

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

## ARTICLE 22

### *Elimination of double taxation*

(1) In accordance with the provisions and subject to the limitations of the laws of Mexico, as may be amended from time to time without changing the general principle hereof, Mexico shall allow its residents as a credit against the Mexican tax:

- (a) the income tax paid to the United Kingdom by or on behalf of such resident; and
- (b) in the case of a company owning at least 10 per cent of the voting stock of a company which is a resident of the United Kingdom and from which the first-mentioned company receives dividends, the income tax paid to the United Kingdom by or on behalf of the distributing company with respect to the profits out of which the dividends are paid.

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(2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Mexican tax payable under the laws of Mexico and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Mexico (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 Mexican tax is computed;
- (b) in the case of a dividend paid by company which is a resident of Mexico 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 Mexican tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Mexican tax payable by the company in respect of the profits out of which such dividend is paid.

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

(4) For the purposes of paragraph (2) of this Article, the term “Mexican tax payable” shall be deemed to include any amount which would have been payable as Mexican tax for any year but for a reduction of tax granted for that year or any part thereof as a result of the application of the following provisions of Mexican law:

- (a) Articles 13, 51, 51-A and 143 of the Income Tax Law of Mexico 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 a reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor aspects 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 twelve years after the reduction of Mexican tax was first granted in respect of that source.

(5) Relief from United Kingdom tax by virtue of paragraph (4) of this Article shall be given for a period of twelve years only, beginning with the date on which this Convention entered into force.

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

## ARTICLE 23

### *Partnerships*

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



## ARTICLE 24

### *Limitation of relief*

(1) Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State, a person, in respect of that income, is subject to tax by reference to the amount thereof which is received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income as is taxed in the other State.

(2) Where under Article 13 of this Convention gains may only be taxed in one of the Contracting States and under the law in force in that State a person is subject to tax in respect of those gains by reference to the amount thereof which is received in that State and not by reference to the full amount thereof, that Article shall apply only to so much of the gains as are taxed in that State.

## ARTICLE 25

### *Non-discrimination*

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

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

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

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

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

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

## ARTICLE 26

### *Mutual agreement procedure*

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

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

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

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article.

(5) If any difficulty or doubt arising as to the interpretation or application of this Convention cannot be resolved by the competent authorities pursuant to the previous paragraphs of this Article, the case may, subject to procedures to be established between the Contracting States by notes to be exchanged through diplomatic channels, if both competent authorities and the taxpayer agree, be submitted for arbitration, provided that the taxpayer agrees in writing to be bound by the decision of the arbitration board. The decision of the arbitration board in a particular case shall be binding on both States with respect to that case.

#### ARTICLE 27

##### *Exchange of information*

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

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

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

#### ARTICLE 28

##### *Members of diplomatic or permanent missions and consular posts*

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

## ARTICLE 29

### *Entry into force*

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

- (a) in Mexico:
  - in respect of income tax, on or after 6th April 1994;
- (b) in the United Kingdom:
  - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April 1994;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April 1994.

## ARTICLE 30

### *Termination*

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

- (a) in Mexico:
  - in respect of income tax, on or after 1st April in the calendar year next following that in which the notice is given;
- (b) in the United Kingdom:
  - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
  - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given.

## PART II

### EXCHANGE OF NOTES

Excellency  
Mexico City  
2nd June 1994

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

*Article 26(5)*

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After a period of three years following the entry into force of the Convention, the competent authorities shall consult in order to determine whether it is appropriate to make the exchange of diplomatic notes referred to in paragraph (5) of Article 26 of the Convention.

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

Excellency

Mexico City

2nd June 1994

I am in receipt of your note dated 2nd June 1994 which states as follows:

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

*Article 26(5)*

After a period of three years following the entry into force of the Convention, the competent authorities shall consult in order to determine whether it is appropriate to make the exchange of diplomatic notes referred to in paragraph (5) of Article 26 of the Convention.

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

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

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

Done in duplicate at Mexico City this 2nd day of June 1994 in the English and Spanish languages, both texts being equally authoritative.

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

*Roger Hervey*

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For the Government of The United Mexican States:

*Dr. Pedro Aspe*

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

*Dr. Pedro Aspe*  
His Excellency the Minister of Finance, for the  
United Mexican States.

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

*Roger Hervey*  
His Excellency the Ambassador of the United  
Kingdom of Great Britain and Northern Ireland.

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

The Convention with Mexico is set out in the Schedule to this Order.

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

Income from immovable property, including income from agriculture or forestry, may be taxed in the country in which the property is situated (Article 6).

Shipping and air transport profits are generally to be taxed only in the residence state of the operator (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).

Dividends paid by a resident of one state to a resident of the other are generally taxable only in the recipient's country (Article 10).

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Depending on the nature of the interest flow concerned, after a transitional period of three years, the rate of tax imposed in the country of source on interest derived by a resident of the other country is not to exceed 5 per cent, 10 per cent or 15 per cent respectively of the gross amount flowing to the other country. Certain categories of interest (e. g. interest paid to the Government of the other country) will be exempt from tax in the source state (Article 11).

The rate of tax imposed in the source country on royalties is limited to 10 per cent where the beneficial owner is a resident of the other country (Article 12).

Each country may generally tax capital gains in accordance with its domestic law, although gains from the alienation of ships or aircraft operated in international traffic shall be taxable only in the country of residence of the operator (Article 13).

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

Occupational pensions, other than those paid in respect of Government Service, and annuities are to be taxed only in the recipient's country of residence (Article 18) while Government Service remuneration and pensions are normally to be taxed only by the paying Government (Article 19).

Certain payments made to visiting students and business apprentices are generally exempt from tax in the country visited (Article 20). Other income (excluding income from trusts or estates) will generally be taxed only by the country of which the beneficial owner is a resident (Article 21).

Where income continues to be taxable in both countries, credit will be given in the taxpayer's country of residence for tax imposed by the other country. The credit to be given in the United Kingdom for tax imposed in Mexico includes credit for tax spared under certain provisions of Mexican law. In the case of dividends, the United Kingdom will give credit for the underlying tax paid in Mexico where the shareholder is a United Kingdom company which controls at least 10 per cent of the voting power in the company paying the dividends (Article 22).

There are provisions whereby the United Kingdom ensures that it retains its right to tax a United Kingdom resident member of a Mexican resident partnership (Article 23) and which limit the relief available in certain circumstances (Article 24).

There are also measures safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 25), for consultation to resolve difficulties in the application or interpretation of the Convention (Article 26), for exchanges of information between the taxation authorities of the two countries (Article 27) and for the treatment of diplomatic or consular officials (Article 28).

The Convention will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect in the United Kingdom from 1st April 1994 in respect of corporation tax and from 6th April 1994 for income tax and capital gains tax. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.