
STATUTORY INSTRUMENTS

1994 No. 769

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Indonesia) Order 1994

Made - - - - 15th March 1994

At the Court at Buckingham Palace, the 15th day of March 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) (Indonesia) Order 1994.
2. It is hereby declared—
 - (a) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of the Republic of Indonesia 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 Indonesia;
 - (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 Indonesia concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
 - (c) that it is expedient that those arrangements should have effect.

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

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N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

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

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

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

Have agreed as follows:

ARTICLE 1

Personal scope

This Agreement 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 Agreement are:

(a) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

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

(b) in Indonesia:

the income tax (Pajak Penghasilan 1984), and to the extent provided in such income tax, the company tax (Pajak Perseroan 1925), and the tax on interest, dividends and royalties (Pajak Atas Bunga, Dividen dan Royalty 1970);

(hereinafter referred to as “Indonesian tax”).

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

ARTICLE 3

General definitions

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

(a) the term “United Kingdom of Great Britain and Northern Ireland” means the territory of Great Britain and Northern Ireland, including any maritime area situated beyond the territorial waters of the United Kingdom within which the United Kingdom of Great Britain and Northern Ireland may exercise rights with regard to the sea-bed and subsoil and the natural resources in accordance with international law;

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- (b) the term “Indonesia” means the territory under the sovereignty of the Republic of Indonesia and such parts of the Continental Shelf and the adjacent seas, over which the Republic of Indonesia has sovereignty, sovereign rights as well as other rights in accordance with international law;
 - (c) the term “national” means:
 - (i) in relation to the United Kingdom, any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Indonesia, any individual possessing the nationality of Indonesia, and any juridical person created or organised under the laws of Indonesia and any organisation without juridical personality treated for the purposes of Indonesian tax as a juridical person created or organised under the laws of Indonesia;
 - (d) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Indonesia as the context requires;
 - (e) the term “person” comprises an individual, a company and any other body of persons, but subject to paragraph (2) of this Article does not include a partnership;
 - (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Indonesia the Minister of Finance or his authorised representative.
- (2) A partnership deriving its status from Indonesian law which is treated as a taxable unit under the law of Indonesia shall be treated as a person for the purposes of this Agreement.
- (3) As regards the application of this Agreement 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 Agreement.

ARTICLE 4

Fiscal domicile

- (1) For the purposes of this Agreement, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of similar nature.
- (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:
- (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);

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- (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, 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 Contracting State in which its place of effective management is situated.

(4) The fact that an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein shall not constitute either the enterprise or the permanent establishment a resident of that other State.

ARTICLE 5

Permanent establishment

(1) For the purposes of this Agreement, 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 of natural resources.

(3) The term “permanent establishment” likewise includes:

- (a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than 183 days;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or connected project) within the Contracting State for a period or periods aggregating more than 91 days within any continuous period of 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 or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, supply of information, scientific research or any other activity of a preparatory or auxiliary character, for the enterprise;

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- (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) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State, other than an agent of an independent status to whom the provisions of paragraph (7) of the Article apply, shall be deemed to be a permanent establishment in the first-mentioned State if:
 - (a) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
 - (b) he maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.
- (6) 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 collects premiums in the territory of that other State or insures risks situated there through an employee or through a representative established there who is not an agent of an independent status within the meaning of paragraph (7) of this Article.
- (7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carried on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly to the business of that enterprise, he shall not be considered an agent of an independent status within the meaning 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 directly or indirectly attributable to that permanent establishment.

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

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

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

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

(6) 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.

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

ARTICLE 8

Shipping and air transport

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

(2) Where profits within paragraph (1) 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

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;

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

ARTICLE 10

Dividends

- (a) (i) Dividends paid by a company which is a resident of the United Kingdom to a resident of Indonesia may be taxed in Indonesia.
- (ii) Where a resident of Indonesia is entitled to a tax credit in respect of such a dividend under subparagraph (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 15 per cent.
- (iii) Except as aforesaid dividends paid by a company which is a resident of the United Kingdom to a resident of Indonesia who is the beneficial owner of the dividends shall be exempt from any tax in the United Kingdom which is chargeable on dividends.
- (b) A resident of Indonesia who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) 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 United Kingdom tax.
- (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner 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. For the purposes of this subparagraph, 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 a third company controls more than 50 per cent of the voting power in both of them.
- (2) Dividends paid by a company which is a resident of Indonesia to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Indonesia and according to the laws of Indonesia, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:
- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 15 per cent of the voting power in the company paying the dividends;
- (b) in all other cases 15 per cent of the gross amount of the dividends.
- (3) The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
- (4) The term “dividends” as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.
- (5) The provisions of paragraph (1) or, as the case may be, (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 Agreement, as the case may be, shall apply.

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

(7) Notwithstanding the other provisions of this Agreement, where a company which is a resident of a Contracting State, having a permanent establishment in the other Contracting State, derives profits through that permanent establishment, such profits may be taxed (in addition to the tax which would be chargeable on those profits if they were the profits of a company which was a resident of that other Contracting State) in accordance with the laws of the other Contracting State but the rate of tax so imposed shall not exceed 10 per cent of the profits of the permanent establishment after payment of the income tax on those profits.

(8) The provisions of paragraph (7) of this Article shall not affect the provisions contained in any production sharing contracts and contracts of work (or any similar contracts) relating to the oil or gas sector or other mining sector entered into by a resident of the United Kingdom with the Government of Indonesia, its instrumentality, its relevant state oil and gas company or any other entity thereof, provided such contracts:

- (a) were concluded on or before 31st December 1983; or
- (b) were being negotiated at 31st December 1983 and the Minister of Finance of Indonesia determined before the date of signature of this Agreement that the profits or income arising from such contracts should be taxed in Indonesia in accordance with the laws in force in Indonesia at 31st December 1983.

ARTICLE 11

Interest

(1) Interest arising in a Contracting State which is derived by 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 law of that State; but where the beneficial owner of such interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

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

- (a) it is derived and beneficially owned by the Government of the other Contracting State, or a political subdivision or a local authority thereof, or the central bank of that other State, or by any agency or instrumentality of, or any financial institution wholly owned by, that Government; or
- (b) it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by the Government of the other Contracting State, or a political subdivision or a local authority of, or the central bank of that other State, or any agency or instrumentality of, or any financial institution wholly owned by, that Government.

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(4) For the purposes of paragraph (3), of this Article the terms “central bank”, “agency”, “instrumentality” and “financial institution wholly owned by that Government” mean:

(a) in the case of the United Kingdom:

- (i) the Bank of England;
- (ii) the United Kingdom Export Credits Guarantee Department;
- (iii) the Commonwealth Development Corporation; and
- (iv) such other agencies or instrumentalities of, and such other financial institutions wholly owned by, the Government of the United Kingdom as may be agreed from time to time between the competent authorities of the Contracting States;

(b) in the case of Indonesia:

- (i) the Bank of Indonesia; and
- (ii) such other agencies or instrumentalities of, and such other financial institutions wholly owned by, the Government of the Republic of Indonesia as may be agreed from time to time between the competent authorities of the Contracting States.

(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 but shall not include any item which is treated as a distribution under the provisions of Article 10 of this Agreement.

(6) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of 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 Agreement, 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 paid was incurred, and such interest is borne by that 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. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

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

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State which are derived by a resident of the other Contracting State may be taxed in that other State.

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(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State; but where the beneficial owner of such royalties is a resident of the other Contracting State the tax so charged shall not exceed:

- (a) in the case of royalties referred to in sub-paragraph (a) of paragraph (3) of this Article, 15 per cent of the gross amount of the royalties; and
- (b) in the case of royalties referred to in sub-paragraph (b) of paragraph (3) of this Article, 10 per cent of the gross amount of the royalties.

(3) The term “royalties” as used in this Article comprises:

- (a) 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, or any patent, know-how, trademark, design or model, plan, secret formula or process; and
- (b) payments of any kind received as a consideration for the use of, or the right to use, any industrial, commercial or scientific equipment.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State 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 Agreement, as the case may be, shall apply.

(5) Royalties 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 royalties, 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 obligation to pay the royalties was incurred, and such royalties are borne by that permanent establishment or fixed base, then such royalties 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 royalties paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

(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 right or property 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 Agreement 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

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gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such a fixed base, may be taxed in that other State.

(3) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

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

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

ARTICLE 14

Independent personal services

(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless:

- (a) 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 State; or
- (b) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 91 days in any continuous period of twelve months; 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, 17, 18, 19 and 20 of this Agreement, 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 continuous period of twelve months; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed

in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 16

Directors' fees

(1) Directors' fees and similar payments derived by a resident of the United Kingdom in his capacity as a “pengurus” or a “komisaris” of a company which is a resident of Indonesia may be taxed in Indonesia.

(2) Directors' fees and similar payments derived by a resident of Indonesia in his capacity as a member of the board of directors of a company which is a resident of the United Kingdom may be taxed in the United Kingdom.

ARTICLE 17

Artistes and athletes

(1) Notwithstanding the provisions of Articles 14 and 15 of this Agreement, 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 Agreement, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, income derived from activities referred to in paragraph (1) performed under a cultural agreement or arrangement between the Contracting States shall be exempt from tax in the Contracting State in which the activities are exercised if the visit to that State is wholly or substantially supported by funds of the other Contracting State, a political subdivision, a local authority or public institution thereof.

ARTICLE 18

Pensions

(1) Subject to the provisions of paragraph (2) of Article 19 of this Agreement, any pension or other similar remuneration paid to a resident of one of the Contracting States from a source in the other Contracting State in consideration of past employment or services in that other Contracting State and any annuity paid to such a resident from such a source may be taxed in that other State.

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

ARTICLE 19

Government service

- (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) However, 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:

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- (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) However, 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 Agreement 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

(1) An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as a student at a university, college, school or other similar recognised educational institution in that other Contracting State or as a business or technical apprentice therein, shall be exempt from tax in that other Contracting State on:

- (a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and
- (b) any income derived from the other Contracting State in respect of services rendered in that other Contracting State (other than any rendered by a business or technical apprentice to the person or partnership to whom he is apprenticed), with a view to supplementing the resources available to him for such purposes, not exceeding the sum of £500 sterling in the case of the United Kingdom, or the equivalent in Indonesian currency in the case of Indonesia, during any year of assessment.

(2) An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State for the purposes of study, research or training solely as a recipient of a grant, allowance or award from the Government of either of the Contracting States or from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of either of the Contracting States for a period not exceeding two years from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on:

- (a) the amount of such grant, allowance or award; and
- (b) any income derived from that other Contracting State in respect of services in that other Contracting State if the services are performed in connection with his study, research, or training or are incidental thereto.

(3) An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in that other Contracting State solely as an employee of, or under contract with, the Government or an enterprise of the first-mentioned Contracting State for the purpose of acquiring technical, professional or business experience for a period not exceeding twelve months from the date of his first arrival in that other Contracting State in connection with that visit shall be exempt from tax in that other Contracting State on:

- (a) all remittances from the first-mentioned Contracting State for the purposes of his maintenance, education or training; and

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- (b) any remuneration, so far as it is not in excess of £500 sterling or the equivalent in Indonesian currency, as the case may be, for personal services rendered in that other Contracting State, provided such services are in connection with his studies or training or are incidental thereto.

Provided that the benefits under this paragraph shall not be granted if the technical, professional or business experience is acquired from a company controlled directly or indirectly by the Government or the enterprise which sent the employee or the person under contract.

ARTICLE 21

Elimination of double taxation

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

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

(2) Where a resident of Indonesia derives income from the United Kingdom and such income may be taxed in the United Kingdom in accordance with the provisions of this Agreement, the amount of United Kingdom tax payable in respect of the income shall be allowed as a credit against the Indonesian tax imposed on that resident. The amount of credit, however, shall not exceed that part of the Indonesian tax which is appropriate to such income.

(3) For the purposes of paragraph (1) of this Article, the term "Indonesian tax payable" shall be deemed to include any amount which would have been payable as Indonesian tax for any year but for an exemption or reduction of tax granted for the year or any part thereof under Article 15(5) and Article 16(1) and (2) of Law No 1 of 1967 of Indonesia to the extent that these provisions continue in force by virtue of Article 33(2)(a) of Act No 7 of 1983 of Indonesia.

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 10 years after the exemption from, or reduction of, Indonesian tax was first granted in respect of that source.

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

(5) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned

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State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article.

ARTICLE 22

Partnerships

Where, under any provision of this Agreement, a partnership is entitled, as a resident of Indonesia, to exemption from tax in the United Kingdom on any income or capital gains, that provision shall not be construed as restricting the right of the United Kingdom to tax any member of the partnership who is a resident of the United Kingdom on his share of such income or capital gains; but any such income or gains shall be treated for the purposes of Article 21 of this Agreement as income or gains from sources in Indonesia.

ARTICLE 23

Non-discrimination

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

(2) Subject to the provisions of paragraphs (7) and (8) of Article 10 of this Agreement, 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) 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 that first-mentioned State are or may be subjected.

(4) 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.

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

ARTICLE 24

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 this Agreement, he may, notwithstanding 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 Agreement.

(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 Agreement.

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

ARTICLE 25

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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by the Agreement insofar as the taxation thereunder is not contrary to the Agreement. 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 Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

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

- (a) to carry out administrative measures at variance with laws and administrative practice prevailing in either Contracting States;
- (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 (ordre public).

ARTICLE 26

Diplomatic agents and consular officials

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

(2) Notwithstanding the provisions of paragraph (1) of Article 4, an individual who is a member of the diplomatic or permanent mission or consular post of a Contracting State or any third State which is situated in the other Contracting State and who is subject to tax in that other State only if he derives income from sources therein, shall not be deemed to be a resident of that other State.

ARTICLE 27

Entry into force

(1) Each of the Contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Agreement.

(2) The Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

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

as respects income derived during any fiscal year beginning on or after 1st January;

in either case in the calendar year next following that in which the later of such notifications is given.

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(3) The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Indonesia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital signed at Jakarta on 13th March 1974 shall terminate and cease to be effective from the date upon which this Agreement has effect in respect of the taxes to which this Agreement applies in accordance with the provisions of paragraph (1) of this Article.

ARTICLE 28

Termination

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

(a) in the United Kingdom:

- (i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given; and

(b) In Indonesia:

as respects income derived during any fiscal year beginning on or after 1st January in the calendar year next following that in which the notice is given.

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

Done in duplicate at Jakarta this 5th day of April, 1993.

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

Douglas Hurd

For the Government of the Republic of Indonesia:

Ali Alatar

EXPLANATORY NOTE

(This note is not part of the Order)

The Agreement with Indonesia is set out in the Schedule to this Order.

The Agreement 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 may be taxed in the country in which the property is situated (Article 6).

Air transport and shipping profits are generally to be taxed only in the residence state of the operator (Article 8).

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

The Agreement provides that where a United Kingdom company pays a dividend to a resident of Indonesia, the recipient will, subject to certain conditions, receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. In the case of a dividend paid by an Indonesian company to a resident of the United Kingdom the tax charged in Indonesia is not to exceed 10 per cent where the dividend is paid to a United Kingdom company which owns at least 15 per cent of the voting power in the paying company. In all other cases the rate of Indonesian tax will not exceed 15 per cent (Article 10).

The rate of tax imposed in the country of source on interest derived by a resident of the other country is, in general, not to exceed 10 per cent of the gross amount flowing to the other country. Certain categories of interest (eg interest payable to the Government of the other country) will be exempt from tax in the source state (Article 11).

The rate of tax in the country of source on industrial royalties flowing to the other country is 10 per cent. For certain other classes of royalties the rate of tax in the country of source is 15 per cent (Article 12).

Each country may 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 (in Indonesia a "pengurus" or a "komisaris") of a company resident in the other country may be taxed in the latter country (Article

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16). Income derived from the activities of artistes and athletes 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). Government service remuneration and pensions are normally to be taxed only by the paying Government (Article 19). Certain payments made to visiting students, apprentices and business trainees are exempt from tax in the country visited (Article 20).

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 Indonesia includes credit for tax spared under certain provisions of Indonesian law. In the case of dividends, the United Kingdom will give credit for the underlying tax paid in Indonesia 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 21).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 23), and for consultation (Article 24) and exchanges of information (Article 25) between the taxation authorities of the two countries.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. The Agreement is to take effect in the United Kingdom on or after 1st April in respect of corporation tax and on or after 6th April for income tax and capital gains tax in the calendar year next following that in which it enters into force. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.