STATUTORY INSTRUMENTS

2023 No. 839

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Brazil) Order 2023

Made - - - - 19th July 2023

At Buckingham Palace, the 19th day of July 2023

Present,

The King's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 173(7) of the Finance Act 2006(**a**) and section 5(2) of the Taxation (International and Other Provisions) Act 2010(**b**) and approved by resolution of that House.

Accordingly, His Majesty, in exercising the powers conferred on Him by section 173(1) to (3) of the Finance Act 2006 and sections 2 and 5(1) of the Taxation (International and Other Provisions) Act 2010, by and with the advice of His Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Brazil) Order 2023.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Agreement set out in Schedule 1, and the arrangements specified in the Convention and Protocol set out in Schedule 2, to this Order have been made with the Federative Republic of Brazil,

(b) the arrangements set out in Schedule 1 have been made with a view to affording relief from double taxation in relation to corporation tax, income tax, and taxes of a similar character imposed by the law of the Federative Republic of Brazil,

(**a**) 2006 c. 25.
(**b**) 2010 c. 8.

(c) the arrangements set out in Schedule 2 have been made with a view to affording relief from double taxation in relation to corporation tax, income tax, capital gains tax, and taxes of a similar character imposed by the laws of the Federative Republic of Brazil, and relate to international tax enforcement, and

(d) it is expedient that both of those arrangements should have effect.

Revocation and transitional provisions

3.—(1) The Double Taxation Relief (Shipping and Air Transport Profits) (Brazil) Order 1968(**a**) is revoked.

(2) Anything done under arrangements given effect to by that Order is to be treated as done under the arrangements set out in Schedule 1 to this Order.

Ceri King
Deputy Clerk of the Privy Council

(**a**) S.I. 1968/572.

SCHEDULE 1

Article 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL TO AVOID THE DOUBLE TAXATION OF PROFITS DERIVED FROM SHIPPING AND AIR TRANSPORT

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil (the "Contracting States"),

Considering the interest in encouraging maritime transport and commercial aviation between the Federative Republic of Brazil ("Brazil") and the United Kingdom of Great Britain and Northern Ireland (the "United Kingdom");

Having regard to the need to avoid the double taxation of profits derived from shipping and air transport;

Recognising that the exemption from taxation on income and profits referred to in Article 2 below was introduced into the law of the United Kingdom of Great Britain and Northern Ireland pursuant to an Order of 8 April 1968, implementing the provisions of the United Kingdom-Brazil Agreement through Exchange of Notes for the Avoidance of Double Taxation on Profits derived from Shipping and Air Transport signed on 29 December 1967(1), in force with effect from 1 January 1967;

Have agreed as follows:

ARTICLE 1

The Government of the Federative Republic of Brazil shall exempt all income derived from the business of shipping and air transport in international traffic by United Kingdom undertakings engaged in such business from all taxes which are covered by the federal income tax law as well as any similar federal taxes or contributions on income or profits which are, or may become, chargeable in Brazil. These include corporate income tax (IRPJ) and Social Contribution on Corporate Net Profits (CSLL).

ARTICLE 2

The Government of the United Kingdom shall exempt all income derived from the business of shipping and air transport in international traffic by Brazilian undertakings engaged in such business from income tax and corporation tax as well as any other taxes or contributions on income or profits which are, or may become, chargeable in the United Kingdom.

ARTICLE 3

For the purposes of this Agreement:

(a) The expression "Brazilian undertakings" means the Government of Brazil and companies managed and controlled in Brazil, provided that they are established in accordance with Brazilian law and have their Head Offices in Brazil;

(b) The expression "United Kingdom undertakings" means the Government of the United Kingdom and companies managed and controlled in the United Kingdom, provided that they have their Head Offices in the United Kingdom;

(c) The expression "business of shipping and air transport" means the business of transporting persons, animals, goods and mail carried on by the owner or charterer of ships or aircraft;

ARTICLE 4

The exemptions provided for in Articles 1 and 2 above shall apply to the income or profits concerned from 1 January 1967.

ARTICLE 5

The provisions of this Agreement shall not affect the Memorandum of Understanding on the Implementation of Reciprocal Tax Exemptions in the sector of Air Transport signed on 9 June 2004.

ARTICLE 6

(1) Each Contracting State shall notify the other of the completion of the constitutional formalities required by its laws for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications.

(2) This Agreement shall remain in force indefinitely, but either Contracting State may terminate it by giving written notice of termination to the other Contracting State six months in advance. In that event the Agreement shall cease to have effect as regards all income arising after 31 December of the calendar year in which the notice is given.

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

Done at Brasilia this twenty-seventh day of July 2005, in duplicate, in the English and Portuguese languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:	FOR THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL:
Peter Collecott	Celso Amorim

SCHEDULE 2

Article 2

CONVENTION

BETWEEN
THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
AND
THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL
FOR THE ELIMINATION OF DOUBLE TAXATION
WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL
AND THE PREVENTION OF TAX EVASION AND AVOIDANCE

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States),

Have agreed as follows:

ARTICLE 1
Persons Covered

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

2. For the purposes of this Convention, income or gains derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income or gains of a resident of a Contracting State but only to the extent that the income or gains is treated, for purposes of taxation by that State, as the income or gains of a resident of that State.

3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 20, 21, 22, 25, 26, 27 and 30.

ARTICLE 2
Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property.

3. The existing taxes to which the Convention shall apply are:

(a) in the case of Brazil:

(i) the federal income tax;

(ii) the social contribution on net profit;

(hereinafter referred to as "Brazilian tax").

(b) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3
General Definitions

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

(a) the term "Brazil" means the Federative Republic of Brazil and, when used in a geographical sense, means the territory of the Federative Republic of Brazil, as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federative Republic of Brazil exercises sovereign rights or jurisdiction in conformity with both international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living natural resources or for the production of energy from renewable sources;

(b) the term "United Kingdom" means Great Britain and Northern Ireland but, when used in a geographical sense, means the territory and territorial sea of Great Britain and Northern Ireland and the areas beyond that territorial sea over which Great Britain and Northern Ireland exercise sovereign rights or jurisdiction in accordance with both their domestic law and international law;

(c) the terms "a Contracting State" and "the other Contracting State" mean Brazil or the United Kingdom, as the context requires;

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(f) the term "enterprise" applies to the carrying on of any business;

(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, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;

(i) the term "competent authority" means:

(i) in the case of Brazil, the Minister of Economy, the Special Secretary of the Federal Revenue of Brazil or their authorised representatives;

(ii) in the case of the United Kingdom, the Commissioners for His Majesty's Revenue and Customs or their authorised representatives;

(j) the term "national" means:

(i) in relation to Brazil, any individual possessing the nationality or citizenship of Brazil; and any legal person, partnership or association deriving its status as such from the laws in force in Brazil;

(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 or association deriving its status as such from the laws in force in the United Kingdom;

(k) the term "pension scheme" of a Contracting State means an entity or arrangement established in that State that is treated as a separate person under the taxation laws of that State and:

(i) that is established and operated exclusively or almost exclusively to administer or provide retirement benefits and ancillary or incidental benefits to individuals and that is regulated as such by that State or one of its political subdivisions or local authorities; or

(ii) that is established and operated exclusively or almost exclusively to invest funds for the benefit of entities or arrangements referred to in subdivision (i).

Where an arrangement established in a Contracting State would constitute a pension scheme under subdivision (i) or (ii) if it were treated as a separate person under taxation law of that State, it shall be considered, for the purposes of this Convention, as a separate person treated as such under the taxation law of that State and all the assets and income to which the arrangement applies shall be treated as assets held and income derived by that separate person and not by another person.

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a different meaning pursuant to the provisions of Article 27, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4
Resident

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, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

2. The term "resident of a Contracting State" includes:

(a) a pension scheme established in that State; and

(b) an organisation that is established and is operated exclusively for religious, charitable, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention, except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

ARTICLE 5
Permanent Establishment

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

2. The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop; and

(f) a mine, an oil or gas well, a quarry or any other place of exploration, exploitation or extraction of natural resources.

3. The term "permanent establishment" also encompasses:

(a) a building site, a construction, assembly or installation project or supervisory activities in connection therewith, but only if such site, project or activities last 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 if activities of that nature continue within a Contracting State for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned.

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 carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

4.1 Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

(a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or

(b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.

5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 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 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 in 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 carrying on activities in that other State other than an agent of an independent status to whom paragraph 7 applies.

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

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.

9. For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.

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 (including the breeding and cultivation of fish) 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 and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 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 shall also apply to the income from immovable property of an enterprise and to the income from immovable property used for the performance of independent personal services.

ARTICLE 7
Business Profits

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

2. Subject to the provisions of paragraph 3, 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 determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, in accordance with the provisions of and subject to the limitations of the taxation laws of the Contracting State concerned.

4. Where profits include items of income or 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
International Shipping and Air Transport

1. Profits of an enterprise 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 or aircraft in international traffic include:

(a) profits from the rental on a bareboat basis of ships or aircraft; and

(b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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, but, by reason of those conditions, have not so accrued, may be included 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 adjustment, due regard shall be had to the other provisions of this Convention and, in any case, any such adjustment shall be made only in accordance with the mutual agreement procedure in Article 27 of the Convention.

3. A Contracting State is not required to make a corresponding adjustment under paragraph 2 after the expiry of the time limits provided in its domestic law.

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 may be taxed in that other State.

2. However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State:

(a) the tax so charged shall not exceed:

(i) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly at least 10 per cent of the capital of the company paying the dividends throughout a 365 day period that includes the day of the payment of the dividend (for the purpose of computing that period, no account shall be taken of changes of ownership that would directly result from a corporate reorganisation, such as a merger or divisive reorganisation, of the company that holds the shares or that pays the dividend); or

(ii) 15 per cent of the gross amount of the dividends in all other cases;

(b) notwithstanding the provisions of sub-paragraph a), the tax so charged shall not exceed 15 per cent of the gross amount of the dividends where those dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment vehicle which distributes most of this income annually and whose income from such immovable property is exempted from tax;

(c) notwithstanding the provisions of sub-paragraphs a) and b), the dividends shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension scheme established in the other Contracting State.

This paragraph 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, or other rights, not being debt-claims, participating in profits, as well as any other item which is treated as income from shares by the taxation laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 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 15, as the case may be, shall apply.

5. Where a resident of a Contracting State has a permanent establishment in the other Contracting State, that permanent establishment may be subject to a tax withheld at source in accordance with the law of that other Contracting State. However, the tax so charged shall not exceed 10 per cent of the gross amount of the profits of that permanent establishment determined after the payment of the corporate tax related to such profits.

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.

ARTICLE 11
Interest

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

2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State:

(a) the tax so charged shall not exceed:

(i) 7 per cent on the gross amount of the interest paid to a bank or insurance company on a loan of at least five years for the financing of infrastructure projects and public utilities;

(ii) 10 per cent on the gross amount of the interest derived from:

(A) loans granted by banks and insurance companies in transactions involving persons that are not associated within the meaning of Article 9;

(B) bonds or securities that are regularly and substantially traded on a recognized stock exchange within the meaning of sub-paragraph a) of paragraph 6 of Article 29;

(C) a sale on credit paid by the purchaser of machinery and equipment to the seller of the machinery and equipment;

(iii) 15 per cent of the gross amount of the interest in all other cases.

(b) notwithstanding the provisions of sub-paragraph a), the interest shall be exempt from tax in the Contracting State of which the company paying the interest is a resident if the beneficial owner of the interest is a pension scheme established in the other Contracting State, the Government of the other Contracting State, a political subdivision thereof or any agency (including a financial institution) wholly owned by that Government or a political subdivision thereof.

3. 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 other income which is treated as income from money lent by the tax law of the Contracting State in which the income arises. The term shall not include any item which is treated as a dividend under the provisions of Article 10.

4. The provisions of paragraphs 1 and 2 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 15, as the case may be, shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest 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 Convention.

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, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

3. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including cinematograph films and recordings for television or radio broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use,

any industrial, commercial, or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

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 15, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is 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 liability 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 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 Convention.

ARTICLE 13
Fees for Technical Services

1. Fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

2. However, notwithstanding the provisions of Article 15 and subject to the provisions of Articles 8, 17 and 18, fees for technical services arising in a Contracting State during time periods for which the Convention has effect in accordance with paragraph 2 of Article 31 may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the fees is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 8 per cent of the gross amount of the fees during the first two years;

(b) 4 per cent of the gross amount of the fees during the third and the fourth year; and

(c) 0 per cent of the gross amount of the fees after the fourth year.

3. The term “fees for technical services” as used in this Article means any payment in consideration for any service of a managerial, technical or consultancy nature, unless the payment is made:

(a) to an employee of the person making the payment;

(b) for teaching in an educational institution or for teaching by an educational institution; or

(c) by an individual for services for the personal use of an individual.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the fees for technical services arise through a permanent establishment situated in that other State, or performs in the other Contracting State independent personal services from a fixed base situated in that other State, and the fees for technical services are effectively connected with such permanent establishment or fixed base. In such cases the provisions of Article 7 or Article 15, as the case may be, shall apply.

5. For the purposes of this Article, subject to paragraph 6, fees for technical services shall be deemed to arise in a Contracting State if the payer is a resident of that State or if the person paying the fees, whether that person 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 fees was incurred, and such fees are borne by the permanent establishment or fixed base.

6. For the purposes of this Article, fees for technical services shall be deemed not to arise in a Contracting State if the payer is a resident of that State and carries on business in the other Contracting State through a permanent establishment situated in that other State or performs independent personal services through a fixed base situated in that other State and such fees are borne by that permanent establishment or fixed base.

7. Where, by reason of a special relationship between the payer and the beneficial owner of the fees for technical services or between both of them and some other person, the amount of the fees, having regard to the services 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 fees shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14
Capital Gains

1. Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or of movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

2. Gains derived by a resident of a Contracting State that arise in the other Contracting State from the alienation of any property or right other than those mentioned in paragraph 1 may be taxed in the other Contracting State.

3. Gains from the alienation of any property or right other than those referred to in paragraphs 1 or 2 shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15
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) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his services or activities. In such case, only so much of the income as is attributable to that fixed base may be taxed in that other State; or

(b) if 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 16
Income from Employment

1. Subject to the provisions of Articles 17, 19 and 20, 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, 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; 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 by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

ARTICLE 17
Directors' Fees

Directors' fees and other similar payments derived by a resident of a Contracting State in that person's capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 18
Entertainers and Sportspersons

1. Notwithstanding the provisions of Articles 7, 15 and 16, 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 sportsperson, from that resident's 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 a sportsperson acting as such accrues not to the entertainer or sportsperson but to another person, that income may, notwithstanding the provisions of Articles 7, 15 and 16, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

ARTICLE 19
Pensions

Subject to the provisions of paragraph 2 of Article 20, pensions and other similar remuneration paid to a resident of a Contracting State, shall be taxable only in that State.

ARTICLE 20
Government Service

(1) (a) Salaries, wages and other similar remuneration 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 salaries, wages and other similar 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;

and is subject to tax in that State on such salaries, wages and other similar remuneration.

(2) (a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration 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 pensions and other similar remuneration 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 16, 17, 18 and 19 shall apply to salaries, wages, pensions, and other similar remuneration 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 21
Teachers and Researchers

An individual who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who, at the invitation of the Government of the first-mentioned State or of a university, college, school, museum or other cultural institution in that first-mentioned State, or under an official programme of cultural exchange, is present in that State for a period not exceeding two consecutive years solely for the purpose of teaching, giving lectures or carrying out research at such institutions shall be exempt from tax in that State on the remuneration for such activity, provided that such remuneration arises from sources outside that State.

ARTICLE 22
Students

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

ARTICLE 23
Other Income

1. Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner 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 Contracting 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 15, as the case may be, shall apply.

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

4. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

ARTICLE 24
Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of the Convention.

2. In this Article the term "offshore activities" means activities which are carried on offshore in a Contracting State in connection with the exploration, exploitation or extraction of the seabed and subsoil and their natural resources situated in that State.

3. An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraphs 4 and 5, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

4. The provisions of paragraph 3 shall not apply where the offshore activities are carried on in the other Contracting State for a period or periods not exceeding in the aggregate 30 days in any twelve-month period beginning or ending in the fiscal year concerned. For the purposes of this paragraph:

(a) where an enterprise of a Contracting State carrying on offshore activities in the other Contracting State is associated with another enterprise carrying on substantially similar offshore activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, with the exception of activities which are carried on at the same time as its own activities;

(b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same person or persons participate directly or indirectly in the management, control or capital of both enterprises.

5. Profits derived by a resident of a Contracting State from:

(a) the transportation, in connection with offshore activities, of supplies or personnel by ship or aircraft to or between places where such activities are being carried on; or

(b) the operation of ships for towing or anchor handling in connection with such activities;

shall be taxable only in that State.

6. Income derived by a resident of a Contracting State from exploration, exploitation or extraction rights and gains derived by a resident of a Contracting State from the alienation of such rights or from the alienation of:

(a) property situated in the other Contracting State and used in connection with offshore activities carried on in that other State; or

(b) shares deriving their value or the greater part of their value directly or indirectly from such rights or such property or from such rights and such property taken together;

may be taxed in that other State. In this paragraph "exploration, exploitation or extraction rights" means rights to assets to be produced by the exploration, exploitation or extraction of the seabed and subsoil and their natural resources in the other State, including rights to interests in or to the benefit of such assets.

7. Subject to paragraph 8 of this Article, salaries, wages and similar remuneration derived by a resident of one of the Contracting States from an employment connected with offshore activities in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State.

8. Salaries, wages and similar remuneration derived by a resident of one of the Contracting States from an employment exercised aboard a ship or aircraft undertaking transportation referred to in sub-paragraph a) of paragraph 5, or aboard a ship undertaking operations referred to in sub-paragraph b) of paragraph 5 shall be taxable only in the Contracting State of which the employee is a resident.

ARTICLE 25
Elimination of Double Taxation

1. In Brazil, double taxation shall be avoided as follows:

(a) Where a resident of Brazil derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Brazil shall allow, subject to the provisions of its law regarding the elimination of double taxation (which shall not affect the general principle hereof), as a deduction from the tax on the income of that resident, an amount equal to the United Kingdom tax paid in the United Kingdom. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United Kingdom.

(b) Where in accordance with any provision of this Convention income derived by a resident of Brazil is exempt from tax in Brazil, Brazil may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

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 or, as the case may be, regarding the exemption from United Kingdom tax of a dividend arising in a territory outside the United Kingdom or of the profits of a permanent establishment situated in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) Brazilian tax payable under the laws of Brazil and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Brazil (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 Brazilian tax is computed;

(b) a dividend which is paid by a company which is a resident of Brazil to a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax when the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;

(c) the profits of a permanent establishment in Brazil of a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax when the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;

(d) in the case of a dividend not exempted from tax under sub-paragraph b) above which is paid by a company which is a resident of Brazil 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 mentioned in sub-paragraph a) above shall also take into account the Brazilian tax payable by the company in respect of its profits out of which such dividend is paid.

For the purposes of this paragraph, profits, income and gains owned by a resident of the United Kingdom which may be taxed in Brazil in accordance with this Convention shall be deemed to arise from sources in Brazil.

3. The provisions of paragraph 1 shall not apply where the United Kingdom tax payable is in accordance with the provisions of this Convention solely because the income referred to in that paragraph is also income, profits or chargeable gains derived by a resident of the United Kingdom.

4. The provisions of paragraph 2 shall not apply where the Brazilian tax payable is in accordance with the provisions of this Convention solely because the income, profits or chargeable gains referred to in that paragraph is also income derived by a resident of Brazil.

5. Where under any provision of this Convention income or gains are 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 or those gains, is subject to tax by reference to the amount thereof which is remitted to or 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 or gains as is taxed in the other State.

6. Where a resident of a Contracting State is not a qualified person, as defined in paragraph 2 of Article 29, nor entitled to benefits under this Convention under paragraph 3 or 4 of Article 29, and such resident is not granted benefits by the competent authority of that Contracting State under paragraph 5 of Article 29, no credit for tax paid in the other Contracting State shall be allowed to such resident in the first-mentioned State.

ARTICLE 26
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, in particular with respect to residence, 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, paragraph 6 of Article 11, paragraph 6 of Article 12, paragraph 7 of Article 13 or paragraph 4 of Article 23 apply, interest, royalties, fees for technical services 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 requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply only to the taxes covered by this Convention.

6. 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.

ARTICLE 27
Mutual Agreement Procedure

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

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in 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.

ARTICLE 28
Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

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

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information,

even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

ARTICLE 29
Entitlement to Benefits

(1) Except as otherwise provided in this Article, a resident of a Contracting State shall not be entitled to a benefit that would otherwise be accorded by this Convention (other than a benefit under paragraph 3 of Article 4, paragraph 2 of Article 9 or Article 27) unless such resident is a "qualified person", as defined in paragraph 2, at the time that the benefit would be accorded.

(2) A resident of a Contracting State shall be a qualified person at a time when a benefit would otherwise be accorded by the Convention if, at that time, the resident is:

(a) an individual;

(b) that Contracting State, or a political subdivision or local authority thereof, or an agency or instrumentality of that State, political subdivision or local authority;

(c) a company or other entity, if the principal class of its shares is regularly traded on one or more recognised stock exchanges;

(d) a person, other than an individual, that:

(i) is an organisation within the meaning of sub-paragraph b) of paragraph 2 of Article 4, or a non-profit organisation as agreed upon by the competent authorities of the Contracting States,

(ii) is a pension scheme;

(e) a person other than an individual if, at that time and on at least half of the days of a twelve-month period that includes that time, persons who are residents of that Contracting State and that are entitled to benefits of this Convention under subparagraphs a) to d) own, directly or indirectly, at least 50 per cent of the shares of the person.

(3) (a) A resident of a Contracting State shall be entitled to benefits under this Convention with respect to an item of income derived from the other Contracting State, regardless of whether the resident is a qualified person, if the resident is engaged in the active conduct of a business in the first-mentioned State and the income derived from the other State emanates from, or is incidental to, that business.

(b) If a resident of a Contracting State derives an item of income from a business activity conducted by that resident in the other Contracting State, or derives an item of income arising in the other State from a connected person, the conditions described in subparagraph a) shall be considered to be satisfied with respect to such item only if the business activity carried on by the resident in the first-mentioned State to which the item is related is substantial in relation to the same or complementary business activity carried on by the resident or such connected person in the other Contracting State. Whether a business activity is substantial for the purposes of this paragraph shall be determined based on all the facts and circumstances.

(c) For purposes of applying this paragraph, activities conducted by connected persons with respect to a resident of a Contracting State shall be deemed to be conducted by such resident.

(d) Notwithstanding the previous sub-paragraphs, where in accordance with the legislation of a Contracting State (including legislation implemented following the entry into force of

this Convention) offshore income derived by a company from the following activities or any combination thereof:

(i) operating as a holding company;

(ii) providing overall supervision or administration of a group of companies;

(iii) providing group financing (including cash pooling); or

(iv) making or managing investments, unless these activities are carried on by a bank, insurance enterprise or registered securities dealer in the ordinary course of its business as such;

is not taxed in that State (except in relation to income from dividends) or is taxed at a rate of tax which is lower than 75 per cent of the rate of tax which is applied to income from similar onshore activities, the other Contracting State shall not be obliged to apply any limitation imposed under this Convention on its right to tax the income derived by the company from such offshore activities or on its right to tax the dividends paid by the company.

(4) A resident of a Contracting State that is not a qualified person shall nevertheless be entitled to a benefit that would otherwise be accorded by this Convention with respect to an item of income if, at the time when the benefit otherwise would be accorded and on at least half of the days of any twelve-month period that includes that time, persons that are equivalent beneficiaries own, directly or indirectly, at least 75 per cent of the shares of the resident.

(5) If a resident of a Contracting State is neither a qualified person pursuant to the provisions of paragraph 2 of this Article, nor entitled to benefits under paragraph 3 or 4, the competent authority of the Contracting State in which benefits are denied under the previous provisions of this Article may, nevertheless, grant the benefits of this Convention, or benefits with respect to a specific item of income, taking into account the object and purpose of this Convention, but only if such resident demonstrates to the satisfaction of such competent authority that neither its establishment, acquisition or maintenance, nor the conduct of its operations, had as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the Contracting State to which a request has been made, under this paragraph, by a resident of the other State, shall consult with the competent authority of that other State before either granting or denying the request.

(6) For the purposes of this and the previous paragraphs of this Article:

(a) the term "recognised stock exchange" means:

(i) the B3 S.A. and any other Brazilian stock exchange recognised under Brazilian law;

(ii) the London Stock Exchange, CBOE Europe Limited and any other United Kingdom investment exchange recognised under United Kingdom law; or

(iii) any other stock exchange agreed upon by the competent authorities of the Contracting States;

(b) with respect to entities that are not companies, the term "shares" means interests that are comparable to shares;

(c) the term "principal class of shares" means the class or classes of shares of a company or entity which represents the majority of the aggregate vote and value of the company or entity;

(d) two persons shall be "connected persons" if one owns, directly or indirectly, at least 50 per cent of the beneficial interest in the other (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) or another person owns, directly or indirectly, at least 50 per cent of the beneficial interest (or, in the case of a company, at least 50 per cent of the aggregate vote and value of the company's shares) in each person. In any case, a person shall be connected to another if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same person or persons;

(e) the term "equivalent beneficiary" means any person who would be entitled to benefits with respect to an item of income accorded by a Contracting State under the domestic law

of that Contracting State, this Convention or a relevant double taxation agreement of that State which are equivalent to, or more favourable than, benefits to be accorded to that item of income under this Convention. For the purposes of determining whether a person is an equivalent beneficiary with respect to dividends received by a company, the person shall be deemed to be a company and to hold the same capital of the company paying the dividends as such capital the company claiming the benefit with respect to the dividends holds.

(7) The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(8) Where an enterprise of a Contracting State derives income from the other Contracting State and the first-mentioned Contracting State treats that income as profits attributable to a permanent establishment situated in a third jurisdiction, the benefits of this Convention shall not apply to that income if that income is subject to a combined aggregate effective rate of tax in the first-mentioned Contracting State and the jurisdiction in which the permanent establishment is situated that is less than the general statutory rate of company tax applicable in the first-mentioned Contracting State. If benefits under this Convention are denied pursuant to the preceding sentence with respect to an item of income derived by a resident of a Contracting State, the competent authority of the other Contracting State may, nevertheless, grant these benefits with respect to that item of income if, in response to a request by such resident, such competent authority determines that granting such benefits is justified in light of the reasons such resident did not satisfy the requirements of this paragraph (such as the existence of losses). The competent authority of the Contracting State to which a request has been made under the preceding sentence shall consult with the competent authority of the other Contracting State before either granting or denying the request.

(9) Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or a capital gain if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

(10) Where a benefit under this Convention is denied to a person under paragraph 9, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or a capital gain, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 9. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

ARTICLE 30
Members of Diplomatic Missions and Consular Posts

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

ARTICLE 31
Entry into Force

1. Each of the Contracting States shall notify in writing through diplomatic channels to the other the completion of the procedures required by its law for the bringing into force of this Convention.

2. This Convention shall enter into force upon the date of receipt of the later notification and its provisions shall have effect:

(a) in Brazil:

(i) in respect of taxes withheld at source, on income paid, remitted or credited on or after the first day of January next following the date upon which the Convention enters into force; and

(ii) in respect of other taxes, on income arising in the taxable years beginning on or after the first day of January next following the date upon which the Convention enters into force.

(b) in the United Kingdom:

(i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the second month next following the date on which this Convention enters into force;

(ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which this Convention enters into force; and

(iii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Convention enters into force.

3. The Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil to Avoid the Double Taxation of Profits Derived from Shipping and Air Transport, signed at Brasilia on 27 July 2005, and the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil to Avoid the Double Taxation of Salaries, Wages and Other Remuneration Derived by a Member of the Crew of an Aircraft Operated in International Traffic, signed at Brasilia on 2 September 2010, shall be suspended and shall not have effect as long as this Convention has effect.

ARTICLE 32
Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Convention, through diplomatic channels, by giving written 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 this Convention. In such event, this Convention shall cease to have effect:

(a) in Brazil:

(i) in respect of tax withheld at source, on income paid, remitted or credited on or after the first day of January next following the calendar year in which the notice is given; and

(ii) in respect of other taxes, on income arising in the taxable years beginning on or after the first day of January next following the calendar year in which the notice is given.

(b) in the United Kingdom:

(i) in respect of taxes withheld at source, for amounts paid or credited after the date that is six months after the date on which notice of termination was given;

(ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which the notice is given; and

(iii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which the notice is given.

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

Done in duplicate at Brazil, this 29 day of November 2022, in the English and Portuguese languages, both texts being equally authentic.

For the Government of the United Kingdom of Great Britain and Northern Ireland	For the Government of the Federative Republic of Brazil
Melanie Hopkins	Júlio César Vieira Gomes

PROTOCOL

At the moment of the signature of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil for the Elimination of Double Taxation with Respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance, the undersigned, duly authorised thereto, have agreed upon the following provisions which constitute an integral part of the Convention.

1. With reference to the Convention

In accordance with the Commentary to Article 1 of the United Nations Model Double Taxation Convention between Developed and Developing Countries on "Improper use of tax treaties" (as it may be revised from time to time), it is understood that this Convention shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance, including provisions of its tax law regarding "thin capitalization" or to avoid the deferral of payment of the income tax such as the "controlled foreign corporations/CFCs" legislation.

2. With reference to Article 3

It is understood, with reference to subparagraphs a) and b) of paragraph 1 of Article 3, nothing in this Convention shall prejudice the position of either Contracting State with regard to any issues concerning territorial sovereignty, sovereignty over maritime areas or any other issues concerning the law of the sea, including the compatibility of that position with international law.

3. With reference to Article 9

It is understood that the adjustment referred to in paragraph 2 of Article 9 will be made only if the other Contracting State agrees, both in principle and as regard the amount, to the adjustment made by the first-mentioned Contracting State.

4. With reference to Articles 10, 11 and 12

If, after the date of signature of this Convention, Brazil agrees, in a convention with any other State, to rates that are lower (including any exemption) than the ones provided in Articles 10, 11 and 12, the Contracting States shall consult with each other to consider whether to update this Convention. The competent authority of Brazil shall notify the competent authority of the United Kingdom of any such new convention as soon as reasonably practicable after the rate has been agreed.

5. With reference to Article 11

(a) It is understood that "interest on the company's equity" ("*juros sobre o capital próprio*" in Portuguese) paid in accordance with the Brazilian law is considered interest for the purposes of paragraph 3 of Article 11.

(b) It is understood that the provisions of sub-paragraph b) of paragraph 2 of Article 11 shall apply to interest paid to an agency (including a financial institution) wholly owned by the Government of a Contracting State or by a political subdivision thereof only when such interest is received by the agency in connection with its functions of public nature.

6. With reference to Article 12

It is understood that, in the case of Brazil, in classifying as royalties payments received as consideration for information (know-how) concerning industrial, commercial or scientific experience, the scope of information of an industrial, commercial or scientific nature is not limited to that arising exclusively from previous experience.

7. With reference to Article 13

If, after the date of signature of this Convention, Brazil agrees, in a Convention with any other State which is a member of the Organization for Economic Cooperation and Development (OECD), excluding any State in Latin America, to rates that are lower (including any exemption) than the ones provided in paragraph 2 of Article 13, then such rates shall, for the purposes of this Convention, automatically be applicable under the same terms, from the time and for as long as such rates are applicable in that other Convention.

8. With reference to Article 17

It is understood that, in the case of Brazil, the provisions of Article 17 apply also to members of the administrative and fiscal councils.

9. With reference to Article 26

(a) It is understood that the provisions of paragraph 5 of Article 10 are not in conflict with the provisions of paragraph 2 of Article 26.

(b) It is understood that the provisions of the Brazilian tax law which do not allow that royalties as defined in paragraph 3 of Article 12, paid by a permanent establishment situated in Brazil to a resident of the United Kingdom that carries on business in Brazil through such a permanent establishment, be deductible at the moment of the determination of the taxable income of the above referred permanent establishment, are not in conflict with the provisions of Article 26 of the present Convention.

(c) With reference to paragraph 6 of Article 26, it is understood that, notwithstanding the fact that United Kingdom nationals are entitled to United Kingdom personal allowances whether they are resident in the United Kingdom or in Brazil, United Kingdom personal allowances are not available to Brazilian nationals who are not resident in the United Kingdom. However, Brazilian nationals who are resident in the United Kingdom are entitled to United Kingdom personal allowances.

10. With reference to Article 27

For purposes of paragraph 3 of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph 3 of Article 27 or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

11. With reference to Article 28

(a) It is understood that, in relation to the requests presented by Brazil, the taxes referred to in paragraph 1 of Article 28 mean federal taxes only.

(b) The Contracting States affirm their commitment to spontaneously exchange information which they consider to be of interest to the other State.

12. With reference to Article 29

(a) In relation to the activities listed in sub-paragraph d) of paragraph 3 of Article 29, the following non-exhaustive list of factors is to be considered, together with the location of the shareholders, activities and assets, in order to determine whether the resident is engaged in the active conduct of a business for the purpose of sub-paragraph a). It is

understood that not all factors may be present in every business, and a comprehensive analysis of the listed factors present in a business is to be carried out to determine if there is an active conduct of a business:

(i) Whether at least half of the statutory board members of the company with powers to decide (key management and commercial decisions that are necessary for the conduct of the entity's business as a whole) are resident in the State of residency of the company and whether they have equal decision-making powers to the non-resident board members. Members of the supervisory board are not required to be considered;

(ii) Whether the board members resident in the State of residence of the company have sufficient knowledge and the capacity to perform their tasks, including making decisions on transactions and managing the completion of transactions;

(iii) Whether the company has qualified staff to manage and register the transactions in its residence State. For this purpose, the staff should be able to conduct the day-to-day activities necessary for preparing and making those decisions in that State;

(iv) Whether the decisions by the board meetings of the company are made by persons physically present in that State. The board meetings are not held in another jurisdiction or held electronically outside the residence State (video conferencing or over the phone). During the board meetings the key management and commercial decisions that are necessary for the conduct of the entity's business are in substance and with independency being made;

(v) Whether the most important bank accounts are held in the company's residence State and the company has the decision-making power and the entitlement to the account;

(vi) Whether the company has an office space in the residence State that is used and has been properly equipped for a period of at least 24 months;

(vii) Whether the company has appropriate equity with regard to the risks inherent in its activities.

(b) It is understood that the benefits granted by a competent authority of a Contracting State under paragraph 5 of Article 29 are the benefits available in that State and that paragraph 5 does not oblige the other Contracting State to grant any benefits.

(c) It is understood that, for the purpose of subparagraph e) of paragraph 6 of Article 29, a relevant double taxation agreement is an agreement that would be applicable between the Contracting State in which the item of income arises and the State of residence of the equivalent beneficiary if the equivalent beneficiary had received the relevant item of income directly.

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

Done in duplicate at Brazil, this 29 day of November 2022, in the English and Portuguese languages, both texts being equally authentic.

For the Government of the United Kingdom of Great Britain and Northern Ireland	For the Government of the Federative Republic of Brazil
Melanie Hopkins	Júlio César Vieira Gomes

EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to two arrangements between the United Kingdom and the Federative Republic of Brazil which are made with a view to affording relief from double taxation.

In this Order, article 1 provides for citation. Article 2 makes declarations as to the effect and content of the arrangements set out in Schedules 1 and 2. Article 3 revokes the Double Taxation Relief (Shipping and Air Transport Profits) (Brazil) Order 1968 (S.I. 1968/572) and makes transitional arrangements relating to it.

Schedule 1 to this Order contains an Agreement ("the 2005 Arrangements") between the United Kingdom and the Federative Republic of Brazil in relation to the elimination of double taxation with respect to taxes on income or profits derived from shipping and air transport.

The 2005 Arrangements aim to eliminate the double taxation of income derived from shipping and air transport. This is done by allocating the taxing rights that each country has under its domestic law over the same income solely to the country of the undertaking.

The 2005 Arrangements take effect retrospectively, from 1 January 1967, in accordance with Article 4 of those arrangements. The 2005 Arrangements are to be suspended once the arrangements set out in Schedule 2 take effect, in accordance with paragraph 3 of Article 31 of the Convention.

Schedule 2 to this Order contains a Convention and Protocol ("the 2022 Arrangements") between the United Kingdom and the Federative Republic of Brazil in relation to the elimination of double taxation with respect to taxes on income and on capital, the prevention of tax evasion and avoidance, and assisting international tax enforcement.

The 2022 Arrangements, in accordance with paragraph 3 of Article 31 of the Convention, suspend the agreements mentioned in that paragraph, in relation to taxes with effect on and after the date the 2022 Arrangements take effect, between the United Kingdom and the Federative Republic of Brazil signed at Brasilia on 27 July 2005 and at Brasilia on 2 September 2010.

The 2022 Arrangements aim to eliminate the double taxation of income and gains arising in one country and paid to residents of the other country. This is done by allocating the taxing rights that each country has under its domestic law over the same income and gains, and by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement.

The 2022 Arrangements will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures and will take effect in each territory in accordance with paragraph 2 of Article 31 of the Convention.

The date of entry into force of the 2022 Arrangements will, in due course, be published in the *London*, *Edinburgh* and *Belfast Gazettes*.

A Tax Information and Impact Note has not been produced for the Order as it gives effect to double taxation agreements. Double taxation agreements impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.

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