STATUTORY INSTRUMENTS

1970 No. 1948

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Japan) Order 1970

Laid before the House of Commons in draft

Made - - - 17*th December* 1970

At the Court at Buckingham Palace, the 17th day of December 1970

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of section 347(6) of the Income Tax Act 1952(**a**), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order :

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 347(1) of the said Income Tax Act 1952, as amended by section 39 and section 64 of the Finance Act 1965(**b**), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows :—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Japan) Order 1970.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the Government of Japan with a view to affording relief from double taxation in relation to income tax, corporation tax, or capital gains tax and taxes of a similar character imposed by the laws of Japan ; and

(*b*) that it is expedient that those arrangements should have effect.

W. G. Agnew.

(**a**) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (**b**) 1965 c. 25.

SCHEDULE

PART I

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The United Kingdom of Great Britain and Northern Ireland and Japan;

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:—

ARTICLE 1

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

ARTICLE 2

(1) The taxes which are the subject of this Convention are:

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

(i) the income tax (including surtax);

(ii) the corporation tax; and

(iii) the capital gains tax;

(*b*) in Japan:

(i) the income tax;

(ii) the corporation tax; and

(iii) the local inhabitant taxes.

(2) This Convention shall also apply to any identical or substantially similar taxes, whether national or local, which are imposed in either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

(3) With respect to enterprises operating ships or aircraft, this Convention shall also apply to the taxes referred to in paragraph (2) of Article 9.

ARTICLE 3

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

(*a*) the term "United Kingdom" means Great Britain and Northern Ireland;

(*b*) the term "Japan" when used in a geographical sense, means the territory in which the laws relating to Japanese tax are in force;

(*c*) the term "nationals" means:

(i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;

(ii) in relation to Japan, all individuals possessing the nationality of Japan and all juridical persons created or organised under the laws of Japan and all organisations without juridical personality treated for the purposes of Japanese tax as juridical persons created or organised under the laws of Japan;

(*d*) the term "United Kingdom tax" means tax imposed in the United Kingdom being tax to which this Convention applies by virtue of paragraph (1) or paragraph (2) of Article 2; the term "Japanese tax" means tax imposed in Japan being tax to which this Convention applies by virtue of paragraph (1) or paragraph (2) of Article 2;

(*e*) the term "tax" means United Kingdom tax or Japanese tax, as the context requires;

(*f*) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Japan, as the context requires;

(*g*) the term "person" includes a company and any other body of persons;

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

(*i*) the terms "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;

(*j*) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Japan the Minister of Finance or his authorised representative;

(*k*) the term "international traffic" means any voyage of a ship or aircraft other than a voyage solely between places in the Contracting State which is not the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

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

ARTICLE 4

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the law of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of head or main office, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State only if he derives income from sources therein. The terms "resident of the United Kingdom" and "resident of Japan" shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then the competent authorities shall determine by mutual agreement the Contracting State of which that individual shall be deemed to be a resident for the purposes of this Convention.

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

ARTICLE 5

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

ARTICLE 6

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

(2) The term "permanent establishment" shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, quarry or other place of extraction of natural resources;

(*g*) a building site or construction or assembly project which exists for more than twelve months.

(3) The term "permanent establishment" shall not be deemed to include:

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 18.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (6) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if:

(*a*) he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

(*b*) he maintains in that Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

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

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

ARTICLE 7

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) (*a*) The term "immovable property" shall, subject to the provisions of sub-paragraph (*b*) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.

(*b*) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting immovable property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 8

(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) 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 at arm's length 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 all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible and allocable, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

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

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

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

ARTICLE 9

(1) Profits from the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State shall be exempt from tax in the other Contracting State.

(2) In respect of the operation of ships or aircraft in international traffic carried on by an enterprise of a Contracting State, that enterprise, if an enterprise of the United Kingdom, shall also be exempt from the enterprise tax in Japan and, if an enterprise of Japan, shall also be exempt from any tax similar to the enterprise tax in Japan which may hereafter be imposed in the United Kingdom.

ARTICLE 10

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, than any profits, which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 11

(1) Dividends paid by a company being a resident of a Contracting State which are beneficially owned by a resident of the other Contracting State may be taxed in that other Contracting State.

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

(*a*) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting power of the company paying such dividends during the whole of the period of twelve months immediately before the end of the accounting period for which the distribution of profits takes place;

(*b*) in all other cases, 15 per cent of the gross amount of the dividends.

(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 income from other corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company; the term does not however, include any interest or royalties granted relief from tax under the provisions of Article 12 or Article 13 of this Convention.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(5) Relief under this Article from the tax of a Contracting State shall be subject to the same limitations as are imposed in respect of relief or exemption from tax under

the law of that Contracting State by any provisions enacted in order to maintain the proper incidence of liability to tax and to prevent the obtaining of undue tax advantages.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State may not impose any tax on the dividends paid by the company and beneficially owned by persons who are not residents of that other Contracting State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other Contracting State.

ARTICLE 12

(1) Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that Contracting State, but the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind, and any excess of the amount repaid in respect of such debt-claims over the amount lent, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(4) The provisions of paragraph (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that Contracting 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 in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Any provision of the law of one of the Contracting States which relates only to interest paid to a non-resident company, or which relates only to interest payments between inter-connected companies, shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a dividend or distribution. The provisions of this paragraph shall not, however, apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

(7) The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

(*a*) does not bear tax in respect thereof in the Contracting State of which it is a resident; and

(*b*) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

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

ARTICLE 13

(1) Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State may be taxed in that other Contracting State.

(2) However, such royalties may be taxed in the Contracting State in which they arise, and according to the law of that Contracting State, but 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 films or tapes for radio or television broadcasting), any patent, trade mark, design or model plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraph (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political sub-division, a local authority or a resident of that Contracting 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 in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Any provision of the law of a Contracting State which requires royalties paid by a company to be left out of account as a deduction in computing the company's taxable profits as being a dividend or distribution shall not operate in relation to royalties paid to a resident of the other Contracting State. The provisions of this paragraph shall not, however, apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons.

(7) The provisions of paragraphs (1), (2) and (5) of this Article shall likewise apply to proceeds arising from the alienation of any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, or secret formula or process, except when the provisions of paragraph (2) of Article 14 are applicable to the gains to be derived from such proceeds.

(8) Where, owing to 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of any property (other than immovable property) forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any property (other than immovable property) pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in that other Contracting State. However, capital gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and any property (other than immovable property) pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

(3) Unless the provisions of paragraph (2) are applicable, capital gains derived by a resident of a Contracting State from the alienation of shares of a company being a resident of the other Contracting State may be taxed in that other Contracting State, if:

(*a*) shares held or owned by the alienator (together with such shares held or owned by any other related persons as may be aggregated therewith) amount to at least 25 per cent of the entire share capital of such company at any time during the taxable year or year of assessment; and

(*b*) the total of the shares alienated by the alienator and such related persons during that taxable year or year of assessment amounts to at least 5 per cent of the entire share capital of such company.

(4) Capital gains derived by a resident of a Contracting State from the alienation of any property other than those mentioned in paragraph (7) of Article 13 and paragraphs (1), (2) and (3) of this Article shall be taxable only in that Contracting State.

ARTICLE 15

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

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

ARTICLE 16

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

(*a*) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the taxable year or year of assessment 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 in respect of an employment exercised aboard a ship or aircraft in international traffic the operation of which is carried on by an enterprise of a Contracting State may be taxed in that Contracting State.

ARTICLE 17

Remuneration derived by a resident of a Contracting State in his 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 Contracting State.

ARTICLE 18

Notwithstanding the provisions of Articles 15 and 16, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

APTICLE 19

(1) Subject to the provisions of paragraphs (1) and (2) of Article 20, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

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

ARTICLE 20

(1) Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a national of Japan or is admitted to Japan for permanent residence therein.

(2) Remuneration or pensions paid by, or out of funds to which contributions are made by the Government of Japan or a local authority thereof to any individual in respect of services rendered to the Government of Japan or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Japan unless the individual is a national of the United Kingdom or is ordinarily resident in the United Kingdom.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on for the purposes of profit by any such Government or local authority as is mentioned therein.

ARTICLE 21

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 Contracting 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 the first-mentioned State, provided that such payments are made to him from outside that State.

ARTICLE 22

(1) A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching.

(2) An individual from one of the Contracting States who is temporarily present in the other Contracting State for a period not exceeding two years as a recipient of a grant, allowance or award for the primary purpose of conducting research from a governmental, religious, charitable, scientific, literary or educational organisation shall be exempt from tax of that other Contracting State in respect of the amount of such grant, allowance or award.

ARTICLE 23

(1) Items of income of a resident of a Contracting State which arise in that or the other Contracting State and which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in the first-mentioned Contracting State.

(2) Items of income of a resident of a Contracting State which do not arise in either Contracting State shall be taxable only in the first-mentioned Contracting State.

(3) This Article shall not be construed as affecting the taxation of income attributable to a permanent establishment which a resident of one of the Contracting States has in the other Contracting State.

ARTICLE 24

(1) Subject to the present 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 and to any subsequent modification of those provisions—which, however, shall not affect the principle hereof—

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

(*b*) in the case of a dividend paid by a company which is a resident of Japan to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Japanese tax creditable under the provisions of sub-paragraph (*a*) of this paragraph) the Japanese tax payable by the company in respect of the profits out of which such dividend is paid.

(2) Subject to the present provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan and to any subsequent modification of those provisions—which, however, shall not affect the

principle hereof—United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against the Japanese tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Japan and which owns not less than 25 per cent either of the voting shares of the company paying the dividend or of the total shares issued by that company, the credit shall take into account the United Kingdom tax payable by the former company in respect of its profits.

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

ARTICLE 25

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

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

(3) 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 Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident, nor as conferring any exemption from tax in a Contracting State in respect of dividends paid to a company which is a resident of the other Contracting State.

(5) In this Article the term "taxation" means taxes of every kind and description.

ARTICLE 26

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

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

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

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

ARTICLE 27

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

ARTICLE 28

(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in notes to be exchanged through diplomatic channels or in any other manner in accordance with their constitutional procedures.

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

ARTICLE 29

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) The Convention shall enter into force after the expiration of thirty days following the date on which the instruments of ratification are exchanged **(a)** and shall thereupon have effect:

(*a*) in the United Kingdom:

(i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April of the calendar year in which this Convention enters into force; and

(ii) as respects corporation tax, for any financial year beginning on or after 1st April of the calendar year in which this Convention enters into force;

(*b*) in Japan:

as respects income for any taxable year beginning on or after 1st January of the calendar year in which this Convention enters into force.

(3) Subject to the provisions of paragraph (4) of this Article the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan signed at Tokyo on 4th September, 1962**(b)** shall cease to have effect as respects taxes to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

(4) Where any provision of the Convention signed at Tokyo on 4th September, 1962 would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect for any year of assessment or financial year or taxable year beginning before the entry into force of this Convention.

(5) The Convention signed at Tokyo on 4th September, 1962 shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

(a) Instruments of Ratification were exchanged on 24th November 1970.
(b) S.I. 1963/887 (1963 II, p. 1495).

ARTICLE 30

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before 30th June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination. In such event, the Convention shall cease to have effect:

(*a*) in the United Kingdom:

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

(ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(*b*) in Japan:

as respects income for any taxable year beginning on or after 1st January of the calendar year next following that in which the notice is given.

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

Done in duplicate at Tokyo this tenth day of February, 1969, in the English and Japanese languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

JOHN PILCHER.

For Japan:

KIICHI AICHI.

PART II

EXCHANGE OF NOTES

10th of February, 1969.

Your Excellency,

I have the honour to refer to the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has been signed today and to propose on behalf of the Government of the United Kingdom that, for the purposes of paragraph (2) of Article 4 of the Convention, the determination by mutual agreement of the status of an individual who is a resident of both Contracting States shall take into consideration the following rules:

(*a*) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

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

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

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

If the foregoing proposal is acceptable to the Government of Japan, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration,

JOHN PILCHER.

His Excellency Mr. Kiichi Aichi,
Minister for Foreign Affairs of Japan.

Tokyo, February 10, 1969.

Your Excellency,

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

"I have the honour to refer to the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which has been signed today and to propose on behalf of the Government of the United Kingdom that, for the purposes of paragraph (2) of Article 4 of the Convention, the determination by mutual agreement of the status of an individual who is a resident of both Contracting States shall take into consideration the following rules:

(*a*) He shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

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

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

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

If the foregoing proposal is acceptable to the Government of Japan, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter."

In reply, I have the honour to state that the Government of Japan accepts the proposal made therein and agrees that Your Excellency's Note and the present reply shall constitute an agreement between the Government of Japan and the Government of the United Kingdom of Great Britain and Northern Ireland in this matter.

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

KIICHI AICHI.
Minister for Foreign Affairs
of Japan.

His Excellency
Sir John Arthur Pilcher,
Ambassador Extraordinary and
Plenipotentiary of the United Kingdom of
Great Britain and Northern Ireland.

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with Japan scheduled to this Order (which is to replace the Convention signed in Tokyo on 4th September 1962) shipping and air transport profits, certain trading profits not arising through a permanent establishment, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries are normally to be taxed by the paying Government only. Remuneration of visiting students are (subject to certain conditions) to be exempt in the country visited. Capital gains arising from the disposal of movable property ore normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of the assets of a permanent establishment which the taxpayer has in the other country.

The rate of tax in the source country on dividends paid to residents of the other country is, in general, not to exceed 10 per cent if the recipient is a company which controls at least 25 per cent of the voting power in the paying company or 15 per cent in other cases. The rate of tax in the source country on interest and royalties paid to residents of the other is in general not to exceed 10 per cent.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. In the case of a dividend paid by a Japanese company, credit for the tax on the profits out of which the dividend is paid is to be given for United Kingdom tax purposes where the recipient of the dividend is a United Kingdom company which controls at least 25 per cent of the voting power in the paying company. There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is in general to take effect in the United Kingdom in the year in which it enters into force following the exchange of instruments of ratification.

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