STATUTORY INSTRUMENTS

1975 No. 2191

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Indonesia) Order 1975

Laid before the House of Commons in draft

Made - - - - 19*th December* 1975

At the Court at Buckingham Palace, the 19th day of December 1975

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 497(8) of the Income and Corporation Taxes Act 1970**(a)**, and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972**(b)** and section 39 of the Finance Act 1965**(c)**, as amended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Indonesia) Order 1975.

2. It is hereby declared—

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

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

N. E. Leigh

(a) 1970 c. 10. (b) 1972 c. 41. (c) 1965 c. 25.

SCHEDULE

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

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

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital;
Have agreed as follows:

ARTICLE 1

Personal scope

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

ARTICLE 2

Taxes covered

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

(*a*) in the case of Indonesia:

(i) pajak pendapatan (income tax);

(ii) pajak perseroan (company tax);

(iii) pajak kekayaan (capital tax); and

(iv) pajak atas bunga, dividen dan royalty (tax on interest, dividend and royalty); (hereinafter referred to as "Indonesian tax");

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

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

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

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

ARTICLE 3

General definitions

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

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

(*b*) the term "Indonesia" means the territory of the Republic of Indonesia and the parts of the seabed and subsoil under the adjacent seas, over which the Republic of Indonesia has sovereign rights in accordance with international law;

(*c*) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the seabed and subsoil and their natural resources may be exercised;

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

(i) in relation to Indonesia, any national of Indonesia and any legal person, partnership, association and entity deriving their status as such from the laws in force in the Republic of Indonesia;

(ii) 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;

(*e*) the term "person" comprises an individual, a company and any other body of persons;

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

(*g*) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*h*) the term "competent authority" means:

(i) in Indonesia, the Minister of Finance or his duly authorised representative;

(ii) in the United Kingdom, the Commissioners of Inland Revenue or their duly authorised representative;

(*i*) the term "tax" means Indonesian tax or United Kingdom tax as the context requires.

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

ARTICLE 4

Fiscal domicile

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, 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 Indonesia" 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 his status shall be determined in accordance with the following rules:

(*a*) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are 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 the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

ARTICLE 5

Permanent establishment

(1) For the purposes of this Agreement, 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 farm or plantation;

(*g*) a mine, oil well, quarry or other place of extraction of natural resources;

(*h*) a building site or construction or assembly project which exists for more than 183 days.

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

(*a*) it carries on supervisory activities within that other Contracting State for more than 183 days in connection with a building site, or a construction or assembly project which is being undertaken, in that other Contracting State; or

(*b*) it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 18; or

(*c*) it furnishes services, including consultancy services, in that other Contracting State through its employees or other personnel (other than agents of an independent status within the meaning of paragraph (7) of this Article) for a period exceeding in the aggregate 183 days within any twelve-month period.

(5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (7) of 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 the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.

(6) An insurance enterprise of a Contracting State shall, except with regard to re-insurance, be deemed to have a permanent establishment in the other Contracting State if it collects premiums in the territory of that other State or insures risks situated there through an employee or through a representative established there who is not an agent of an independent status within the meaning of paragraph (7) of this Article.

(7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it 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. However, when the activities of such an agent are devoted wholly or almost wholly to the business of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.

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

ARTICLE 6

Limitation of relief

Where under any provision of this Agreement income is relieved from Indonesian tax and, under the law in force in the United Kingdom, 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 the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in Indonesia shall apply only to so much of the income as is remitted to or received in the United Kingdom.

ARTICLE 7

Income from immovable property

(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 subparagraph (*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 landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

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

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

ARTICLE 8

Business profits

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

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

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

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

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

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

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

ARTICLE 9

Shipping and air transport

(1) Subject to the provisions of paragraph (3) of this Article, a resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships which are registered in the first-mentioned Contracting State or are operated under the Indonesia-Europe Freight Conference arrangements.

(2) Subject to the provisions of paragraph (3) of this Article, a resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of aircraft.

(3) Profits from voyages of ships or aircraft confined solely to places in a Contracting State may be taxed in that State.

ARTICLE 10

Associated enterprises

Where:

(*a*) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

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

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

ARTICLE 11

Dividends

(1)(*a*) Dividends paid by a company which is a resident of the United Kingdom to a resident of Indonesia may be taxed in Indonesia.

(*b*) Where a resident of Indonesia is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(*c*) Except as aforesaid dividends paid by a company which is a resident of the United Kingdom to a resident of Indonesia who is subject to tax in respect thereof in Indonesia, shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Indonesia who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (3) of this Article and provided he is subject to tax on these dividends in Indonesia, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.

(3) Paragraph (2) of this Article shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purposes of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends paid by a company which is a resident of Indonesia to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Indonesia but where the recipient of the dividends is a resident of the United Kingdom who is subject to tax on them in the United Kingdom, the Indonesian tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

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

(5) The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(6) The term "dividends" as used in this Article means income from shares, jouissance shares or jouissance rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights treated in the same manner as 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 (other than interest relieved from tax under the provisions of Article 12) which is treated as a distribution under the taxation law of the Contracting State of which the company making the payment is a resident.

(7) The provisions of paragraphs (1) and (2) or, as the case may be, paragraph (4) of this Article shall not apply if the recipient 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 the business carried on through such permanent establishment. In such a case the provisions of Article 8 shall apply.

(8) 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 to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 12

Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State; but where such interest is paid to a resident of the other Contracting State who is subject to tax there in respect thereof, the tax so charged in the Contracting State in which the interest arises shall not exceed 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article the tax charged by the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest, if:

(*a*) the interest is owed by a bank or a financial institution or by an enterprise mainly engaged in activities in the fields of agriculture, plantation, forestry, fishery, dairy-farming, mining, manufacturing industries, transportation, people's housing projects, tourism and infra-structure; and

(*b*) the interest is derived by a bank or a financial institution or by another enterprise.

(4) Notwithstanding the provisions of paragraphs (2) and (3) of this Article interest arising in a Contracting State and received by any agency or instrumentality of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

(5) 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 as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the recipient of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises 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.

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

(8) Where, owing to a special relationship between the payer and the recipient 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 recipient 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 Agreement.

ARTICLE 13

Royalties

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

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State; but where such royalties are paid to a resident of the other Contracting State who is subject to tax there in respect thereof the tax so charged in the Contracting State in which the royalties arise 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 paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise 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 where the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to a special relationship between the payer and the recipient 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 recipient 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 Agreement.

ARTICLE 14

Capital gains

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

(2) Capital gains from the alienation of any movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of any movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing 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 the other State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

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

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

ARTICLE 15

Independent personal services

(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

Employments

(1) Subject to the provisions of Articles 17, 18, 19, 20, 21 and 22, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

(*a*) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days within any period of twelve months; and

(*b*) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 17

Directors' fees

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

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

ARTICLE 18

Artistes and athletes

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 those activities are exercised.

ARTICLE 19

Pensions

(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 in money or money's worth.

ARTICLE 20

Governmental functions

(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 an Indonesian national without also being a United Kingdom national.

(2) Remuneration or pensions paid by, or out of funds created by Indonesia or a local authority thereof to any individual in respect of services rendered to the Government of Indonesia or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Indonesia unless the individual is a United Kingdom national without also being an Indonesian national.

(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.

ARTICLE 21

Teachers

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 or a non-commercial and non-industrial research institute, 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 in respect of which he is subject to tax in the other Contracting State.

ARTICLE 22

Students

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

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

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

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

(*a*) the amount of such grant, allowance or award; and

(*b*) any income derived from that other Contracting State in respect of services in that other Contracting State if the services are performed in connection with his study, research, or training or are incidental thereto.

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

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

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

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

ARTICLE 23

Income not expressly mentioned

Items of income of a resident of a Contracting State being income of a class or from sources not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

ARTICLE 24

Capital

(1) Capital represented by property forming part of the business property of a permanent establishment of an enterprise, or by property pertaining to a fixed base used for the performance of professional services, may be taxed in the Contracting State in which the permanent establishment or fixed base is situated.

(2) Notwithstanding the provisions of paragraph (1) of this Article, ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in the Contracting State of which the operator is a resident.

(3) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

ARTICLE 25

Elimination of double taxation

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

(*a*) Indonesian tax payable under the laws of Indonesia and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Indonesia (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Indonesian tax is computed;

(*b*) in the case of a dividend paid by a company which is resident of Indonesia to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Indonesian tax creditable under the provisions of sub-paragraph (*a*) of this paragraph) the Indonesian tax payable by the company in respect of the profits out of which such dividend is paid.

(2) For the purposes of paragraph (1) of this Article, the term "Indonesian tax payable" shall be deemed to include any amount which would have been payable as Indonesian tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under:

(*a*) Article 15(5) and Article 16(1) and (2) of Law No. 1 of 1967 of Indonesia, so far as they were in force on and have not been modified since the date of signature of this Agreement, or have been modified only in minor respects so as not to affect their general character; or

(*b*) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Indonesian tax was first granted in respect of that source.

(3) Indonesia, when imposing tax on residents of Indonesia may include in the basis upon which such taxes are imposed the items of income or capital which according to the provisions of this Agreement may be taxed in the United Kingdom.

(4) Subject to the provisions of paragraph (5) of this Article, Indonesia shall allow a deduction from the tax computed in conformity with paragraph (3) of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax as the part of the income or capital which is included in the basis of that tax and may be taxed in the United Kingdom according to the provisions of this Agreement bears to the total income or capital which forms the basis for Indonesian tax.

(5) Where a resident of Indonesia derives income which, in accordance with paragraph (1) of Article 11, paragraphs (2) and (3) of Article 12, and paragraph (2) of Article 13 may be taxed in the United Kingdom, Indonesia shall allow as a deduction from the Indonesian tax on the income of that person an amount equal to the tax paid in the United Kingdom on that income. Such deduction shall not, however, exceed that part of the Indonesian tax computed in conformity with paragraph (3) of this Article which is appropriate to the income derived from the United Kingdom.

(6) Where a resident of Indonesia derives gains which may be taxed in the United Kingdom in accordance with Article 14, Indonesia shall allow a deduction from its tax on such gains up to an amount equal to the tax levied in the United Kingdom on the said gains.

(7) For the purposes of the preceding paragraphs 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 Agreement shall be deemed to arise from sources in that other Contracting State.

(8) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing wholly independently, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or, as the case may be, paragraphs (4) and (5) of this Article.

ARTICLE 26

Personal allowances

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of Indonesia shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

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

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

ARTICLE 27

Non-discrimination

(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 that 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:

(*a*) 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

(*b*) as being applicable to any tax of a preferential nature which a Contracting State may impose in pursuance of its programme of economic development and which the competent authorities of the Contracting States agree should be excluded from the provisions of this Article.

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

ARTICLE 28

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement, he may, notwithstanding the remedies provided by the 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 Agreement.

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

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

ARTICLE 29

Exchange of information

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 Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. 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 Agreement. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 30

Territorial extension

(1) This Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations either Contracting State is responsible and which imposes taxes substantially similar in character to those to which this Agreement 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.

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

ARTICLE 31

Entry into force

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

(2) This Agreement 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 and capital gains tax, for any year of assessment beginning on or after 6 April 1974; and

(ii) as respects corporation tax, for any financial year beginning on or after 1 April 1974;

(*b*) in Indonesia:

as respects income derived during any taxable year beginning on or after 1 January 1974.

ARTICLE 32

Termination

This Agreement shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Agreement, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1977. In such event, the Agreement shall cease to have effect:

(*a*) in the United Kingdom:

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

(*b*) in Indonesia:

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

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

Done in duplicate at Jakarta this thirteenth day of March 1974.

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

SIR W. I. COMBS

For the Government of the Republic of Indonesia:

A. MALIK

(a) Instruments of ratification were exchanged on 3rd December 1975.

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Agreement with Indonesia scheduled to this Order, 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 and pensions are normally to be taxed by the paying Government only. The remuneration of visiting teachers and professors and certain payments made to visiting students are (subject to certain conditions) to be exempt in the country visited.

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. The credit to be given in the United Kingdom for tax payable in Indonesia is to include credit for tax spared under certain provisions of the Indonesian law.

The Agreement provides that where a United Kingdom company pays a dividend to a resident of Indonesia other than a company which controls 10 per cent or more of the voting power in the paying company, the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. Dividends paid by Indonesian companies to residents of the United Kingdom will, subject to certain conditions, be taxable in Indonesia at rates not exceeding 10 per cent, if the recipient is a United Kingdom company which controls at least 25 per cent of the voting power in the company paying the dividends, and 15 per cent in all other cases.

The maximum rate of tax to be imposed by the country of source upon interest paid to a resident of the other country is, in general, 15 per cent. The rate of tax, however, is not to exceed 10 per cent where the interest is paid by a bank or financial institution or by an enterprise engaged in specified activities. Interest received by an agency or instrumentality of either state is not to be taxed in the other state.

The rate of tax in the source country on royalties flowing from one country to the other is, in general, not to exceed 10 per cent.

There is provision for the taxation of capital gains on immovable property by the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country.

There are also 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 Agreement is to take effect in the United Kingdom as respects income tax and capital gains tax for the tax year 1974/75 and subsequent years and as respects corporation tax for the financial year commencing on 1st April 1974 and subsequent years.

SI 1975/2191
ISBN 0-11-052191-9

