STATUTORY INSTRUMENTS

1978 No. 786

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Republic of Korea) Order 1978

Laid before the House of Commons in draft

Made - - - - 31*st May* 1978

At the Court at Buckingham Palace, the 31st day of May 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 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) (Republic of Korea) Order 1978.

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 Protocol set out in Part II of that Schedule have been made with the Government of the Republic of Korea 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 the Republic of Korea; and

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

N. E. Leigh,
Clerk of the Privy Council.

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

SCHEDULE

PART I

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

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

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

Have agreed as follows:

ARTICLE 1

Personal scope

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

ARTICLE 2

Taxes covered

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

(*a*) in Korea:

(i) the income tax;

(ii) the corporation tax; and

(iii) the inhabitant tax;

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

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

ARTICLE 3

General definitions

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

(*a*) the term "Korea" means the Republic of Korea and when used in a geographical sense, the term "Korea" means all the territory in which

the laws relating to Korean tax are in force. The term also includes the territorial sea thereof, and the seabed and subsoil of the submarine areas adjacent to the coast thereof, but beyond the territorial sea, over which Korea exercises sovereign rights, in accordance with international law, for the purpose of exploration and exploitation of the natural resources of such area;

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

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

(i) in relation to Korea, any individual possessing Korean nationality and any legal person, partnership and association deriving their status as such from the law in force in Korea;

(ii) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies who derives his status as such from his connection with the United Kingdom and any legal person, association or other entity deriving its status as such from the law in force in the United Kingdom;

(*d*) the term "Korean tax" means tax imposed by Korea being tax to which this Convention applies by virtue of the provisions of Article 2; the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of Article 2;

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

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

(*g*) the term "person" comprises an individual, 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 Korea the Minister of Finance or his authorised representative, and in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative.

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

ARTICLE 4

Fiscal domicile

(1) For the purposes of this Convention, 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 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 Korea" and "resident of the United Kingdom" 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 closer (centre of vital interests);

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

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

(*d*) 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.

(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. In cases of doubt the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

Permanent establishment

(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, oil well, quarry or other place of extraction of natural resources;

(*g*) a building site or construction, installation or assembly project which exists for more than six 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 supervisory activities in that other Contracting State for more than six months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State.

(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 paragraph (6) of this Article applies—shall be deemed to be a permanent establishment in the first-mentioned State if:

(*a*) he has, and habitually exercises in the first-mentioned 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 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 6

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 sub-paragraph (*b*) below, be defined in accordance with the laws 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 7

Business profits

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

(2) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length 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) 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.

(5) 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 8

Shipping and air transport

(1) A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

(2) (*a*) A resident of Korea shall be exempt from any future United Kingdom tax which is similar to the business tax in Korea in respect of the operation of ships and aircraft on voyages which are not confined solely to places in the United Kingdom.

(*b*) A resident of the United Kingdom shall be exempt from the business tax in Korea in respect of the operation of ships or aircraft on voyages which are not confined solely to places in Korea.

ARTICLE 9

Associated enterprises

Where

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

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

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

ARTICLE 10

Dividends

(1) Dividends derived from a company which is a resident of Korea by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Korea but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 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.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Korea may be taxed in Korea. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of Korea the tax so charged shall not exceed:

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

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

(3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

(*a*) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Korea may be taxed in Korea.

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

(iii) Except as provided in sub-paragraph (*a*) (ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Korea shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(*b*) A resident of Korea who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (*c*) of this paragraph and provided he is the beneficial owner of the dividends, 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 such credit over his liability to United Kingdom tax.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph shall not apply where the beneficial owner of the dividends 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 dividends. For the purpose of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(4) The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as

income from 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 (other than interest relieved from tax under the provisions of Article 11 of this Convention) 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.

(5) The provisions of paragraph (1), or as the case may be paragraphs (2) or (3), of this Article shall not apply where the resident of one of the Contracting States has in the other Contracting State 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 7 shall apply.

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

ARTICLE 11

Interest

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

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

(*a*) 10 per cent of the gross amount of such interest where it is paid in respect of a loan or other debt-claim for a period exceeding two years;

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

(3) Notwithstanding the provisions of Article 7, interest arising in Korea which is paid to and beneficially owned by a resident of the United Kingdom shall be exempt from Korean tax if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the United Kingdom Export Credits Guarantee Department.

(4) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if the interest is received by the Government of the other Contracting State, by any local authority thereof, the central bank of that other Contracting State, or any financial institution wholly owned by that Government or that central bank, or by both.

(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) and (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 in which the interest arises a permanent establishment with which the debt-claim from which the interest arises is effectively connected. In such a case, the provisions of Article 7 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 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 12

Royalties

(1) Royalties arising in a Contracting State which are derived and beneficially owned by 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 the tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of such royalties which are paid for the use of, or the right to use, any patent, design, model, plan, secret formula or process for industrial purposes, or for information concerning industrial or scientific experience; and

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

(3) The term "royalties" as used in this Article means payment 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 beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment with which the right or property giving rise to the royalties is effectively connected. In such a case, the provisions of Article 7 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 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 13

Capital gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise), 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 preceding paragraphs 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 movable property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

ARTICLE 14

Personal services

(1) Subject to the provisions of Articles 15, 17, 18, 19 and 20 remuneration derived by a resident of a Contracting State in respect of personal services shall be taxable only in that State unless the services are rendered in the other Contracting State. If the services are so rendered, 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 services rendered 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 fiscal year concerned; and

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

(*c*) the remuneration is not borne by a permanent establishment which the person paying the remuneration 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.

(4) For the purposes of this Article the term "remuneration" includes fees in respect of professional services. However, where a resident of a Contracting State so elects for any year of assessment or taxable year, the tax chargeable in respect of those fees in that other State shall be calculated by reference to his income for such services with a deduction for expenses incurred in the performance of those services.

ARTICLE 15

Directors' fees

Directors' fees and similar payments 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 State.

ARTICLE 16

Artistes and athletes

(1) Notwithstanding the provisions of Articles 14 and 15, 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.

(2) Where income in respect of personal activities as such of an entertainer or athlete accrues not to that entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income derived from activities performed in a Contracting State by entertainers or athletes if their visit to that Contracting State is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, a political subdivision or a local authority thereof.

ARTICLE 17

Pensions

(1) Subject to the provisions of paragraphs (1) and (2) of Article 18, 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 18

Government functions

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

(2) 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 Korean national without also being a United Kingdom 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.

(4) The provisions of paragraphs (1), (2) and (3) of this Article shall likewise apply in respect of remuneration or pensions paid by a government-owned institution performing functions of a governmental nature which in the case of Korea shall include the Bank of Korea, Korea Exchange Bank and the Korea Trade Promotion Corporation.

ARTICLE 19

Teachers

(1) An individual who is a resident of a Contracting State at the time he becomes temporarily present in the other Contracting State, at the invitation of that other State or of a university, college, school or other recognised educational institution in the other State, for the primary purpose of teaching or engaging in research, or both, at a university, college, school or other recognised educational institution shall be exempt from tax by that other State on his income from personal services for teaching or research at such university, college, school or educational institution, for a period not exceeding two years from the date of his arrival in that other State.

(2) This Article shall not apply to income from research if such research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 20

Students and trainees

(1) An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and who is temporarily present in that other Contracting State for the primary purpose of:

(*a*) studying at a university or other recognised educational institution in that other Contracting State; or

(*b*) securing training required to qualify him to practise a profession or a professional speciality; or

(*c*) studying or doing research as a recipient of a grant, allowance, or award (not including a salary or part salary), from a government, religious, charitable, scientific, literary or educational organisation;

shall be exempt from tax in that other Contracting State on:

(i) remittances from abroad for the purpose of his maintenance, education, study, research or training;

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

(iii) income from personal services rendered in that other Contracting State (other than any rendered by an articled clerk or other person undergoing professional training to the person or partnership to whom he is articled or who is providing the training) not exceeding the sum of £750 sterling in the case of the United Kingdom or the equivalent in Korean Won in the case of Korea, during any year of assessment or taxable year.

(2) The exemptions from tax provided under paragraph (1) of this Article shall apply only for such period of time as may be reasonably or customarily required for the purpose of the individual's visit, but in no event shall any individual have the benefit of that paragraph for more than five consecutive years from the date of his first arrival in the other Contracting State.

(3) An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and who is temporarily present in that other Contracting State 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 two years from the date of his first arrival in that other Contracting State shall be exempt from tax in that other Contracting State on:

(*a*) all remittances from abroad for the purposes of his maintenance, education, study or training, and

(*b*) any remuneration for such period for his personal services performed in connection with his study or training of an amount not exceeding £1,200 sterling or its equivalent in Korean Won, during any year of assessment or taxable year.

(4) An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and who is present in the other Contracting State for a period not exceeding twelve months from the date of his first arrival in that other Contracting State in connection with that visit, as a participant in a programme sponsored by the Government of that other Contracting State for the purposes of training, research or study, shall be exempt from tax in that other Contracting State on:

(*a*) all remittances from abroad for the purposes of his maintenance, training, research or study, and

(*b*) any remuneration, so far as it does not exceed £1,200 sterling, or its equivalent in Korean Won, as the case may be, during any year of assessment, for personal services rendered in that other Contracting State in connection with his studies or training.

ARTICLE 21

Elimination of double taxation

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

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

(*b*) in the case of a dividend paid by a company which is a resident of Korea 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 Korean tax creditable under the provisions of sub-paragraph (*a*) of this paragraph) the Korean tax payable by the company in respect of the profits out of which such dividend is paid.

(2) Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against Korean 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 Korea and which owns directly at least 10 per cent of the capital of the company paying the dividend, 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 paragraph (1) and (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

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

(*a*) Article 15 and Article 24 of the Foreign Capital Inducement Law of Korea (so far as they were in force on and have not been modified since the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character), in any case where the induced capital, loan or technology in question is certified by the competent authority of Korea as being for the purpose of promoting new industrial, commercial, scientific or educational development in Korea; 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, Korean tax was first granted in respect of that source.

ARTICLE 22

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 than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

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

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

ARTICLE 23

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 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 24

Exchange of information

(1) 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 which are the subject of this Convention. 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.

(2) The competent authorities of the Contracting States shall notify each other of any amendments of the laws relating to the taxes referred to in paragraph (1) of Article 2 and of the adoption of any taxes referred to in paragraph (2) of Article 2, by transmitting the texts of any amendments or new statutes, if any, at least once a year.

ARTICLE 25

Diplomatic and consular officials

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

ARTICLE 26

Territorial extension

(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 the diplomatic channel 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 27

Entry into force

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

(2) This 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 Korea:

as respects income tax, corporation tax and inhabitant tax for any taxable year beginning on or after 1 January 1976;

(*b*) in the United Kingdom:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1976; and

(ii) as respects corporation tax, for any financial year beginning on or after 1 April 1976.

ARTICLE 28

Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1980. In such event, the Convention shall cease to have effect:

(*a*) in Korea:

as respects income tax, corporation tax and inhabitant tax for any taxable year beginning on or after 1 January of the calendar year next following that in which the notice is given;

(*b*) 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.

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

Done in duplicate at Seoul, this twenty-first day of April 1977, in the English and Korean languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND	FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA
EDMUND DELL	HA JONG YOON

(**a**) Instruments of ratification were exchanged on 12 April 1978.

PART II

PROTOCOL

At the time of signing of the Convention concluded this day between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Korea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, the undersigned have agreed that the following provisions shall form an integral part of the Convention:

(*a*) As long as the temporary defence surtax is imposed in Korea and charged by reference to the income tax, the corporation tax, or the inhabitant tax, it shall be the subject of this Convention within the meaning of paragraph (1)(*a*) of Article 2.

(*b*) The provisions of paragraph (2)(*a*) of Article 27 and of paragraph (*a*) of Article 28 of this Convention shall also extend to the temporary defence surtax as long as it is imposed in Korea.

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

Done in duplicate at Seoul, this 21st day of April 1977, in the English and Korean languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

EDMUND DELL

FOR THE GOVERNMENT OF THE REPUBLIC OF KOREA

HA JONG YOON

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention (as amended by the Protocol) with the Republic of Korea 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 residence of the taxpayer. Government salaries and pensions are normally to be taxed by the paying Government only. The remuneration of visiting teachers 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 residence of the taxpayer. The credit to be given in the United Kingdom for tax payable in the Republic of Korea is to include credit for tax spared under certain provisions of Korean law.

The rate of tax on dividends flowing from one country to the other is normally not to exceed 10 per cent where the dividend is paid to a company which controls directly or indirectly at least 10 per cent of the voting power in the paying company and 15 per cent in all other cases. The Convention also makes specific provision for dividends paid by a United Kingdom company to a resident of the Republic of Korea as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom: where a United Kingdom company pays a dividend to a resident of the Republic of Korea (other than a company which controls directly or indirectly at least 10 per cent 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 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.

The rate of tax in the source country on interest flowing from one country to the other is, in general, not to exceed 10 per cent in the case of loans for periods exceeding 2 years and 15 per cent in all other cases. Interest received by the Government (or a governmental institution) will be exempt from tax in the country of source. Interest on loans guaranteed by the United Kingdom ECGD will also be exempt from tax in the Republic of Korea.

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 in the case of industrial royalties and 15 per cent in other cases.

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 residence of the taxpayer unless they arise from the disposal of assets of a permanent establishment 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 Convention is to take effect in the United Kingdom for income tax and capital gains tax for the tax year 1976-77 and subsequent years and for corporation tax for the financial year beginning on 1 April 1976 and subsequent years.

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