STATUTORY INSTRUMENTS

1981 No. 1120

INCOME TAX

The Double Taxation Relief (Taxes on Income) (India) Order 1981

Laid before the House of Commons in draft

Made - - - - 31*st July* 1981

At the Court at Buckingham Palace, the 31st day of July 1981

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 that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, 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) (India) Order 1981.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of India 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 India; and

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

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

(a) 1970 c. 10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).

SCHEDULE

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

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

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 the United Kingdom of Great Britain and Northern Ireland:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(iv) the petroleum revenue tax; and

(v) the development land tax;

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

(*b*) in India:

(i) the income-tax and any surcharge thereon imposed under the Income-tax Act, 1961 (43 of 1961); and

(ii) the surtax imposed under the Companies (Profits) Surtax Act, 1964 (7 of 1964);

(hereinafter referred to as "Indian 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. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3

General definitions

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

(*a*) 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 sea bed and sub-soil and their natural resources may be exercised;

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

(*c*) the term "fiscal year" in relation to Indian tax means "previous year" as defined in the Income-tax Act, 1961 (43 of 1961);

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

(*e*) the term "person" includes 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 company or 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, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of India the Central Government in the Department of Revenue;

(*i*) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State;

(*j*) the term "Government" means the Government of a Contracting State or a political subdivision or local authority thereof. In relation to the United Kingdom, the term "political subdivision" shall include Northern Ireland.

(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 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.

(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.

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*) premises used as a sales outlet or for receiving or soliciting orders;

(*g*) a warehouse in relation to a person providing storage facilities for others;

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

(*i*) an installation or structure used for the exploration of natural resources;

(*j*) a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or supervisory activity continues for a period of more than six months, or where such project or supervisory activity, being incidental to the sale of machinery or equipment, continues for a period not exceeding six months and the charges payable for the project or supervisory activity exceed 10 per cent of the sale price of the machinery and equipment.

(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 or for scientific research, being activities solely of a preparatory or auxiliary character in the trade or business of the enterprise. However, this provision shall not be applicable where the enterprise maintains any other fixed place of business in the other Contracting State for any purpose or purposes other than the purposes specified in this paragraph.

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

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

(*b*) he habitually maintains in the first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly delivers goods or merchandise for or on behalf of the enterprise.

(5) 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, if the activities of such an agent are carried out wholly or almost wholly for the enterprise (or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it) he shall not be considered to be an agent of an independent status for the purposes of this paragraph.

(6) 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*) of this paragraph, 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 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) 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) 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.

(4) (*a*) 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 only those executive and general administrative expenses incurred, whether in the State in which the permanent establishment is

situated or elsewhere, which are allowed under the provisions of the domestic law of the Contracting State in which the permanent establishment is situated.

Provided that where the law of the Contracting State in which the permanent establishment is situated imposes a restriction on the amount of the executive and general administrative expenses which may be allowed, and that restriction is relaxed or overridden by any Convention between that Contracting State and a third State which enters into force after the date of entry into force of this Convention, the competent authority of that Contracting State shall notify the competent authority of the other Contracting State of the terms of the corresponding paragraph in the Convention with that third State immediately after the entry into force of that Convention and, if the competent authority of the other Contracting State so requests, the provisions of this sub-paragraph shall be amended by protocol to reflect such terms.

(*b*) However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the permanent establishment. Likewise, no account shall be taken in the determination of the profits of a permanent establishment of amounts charged (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on monies lent to the head office of the enterprise or any of its other offices.

(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) Where profits include items of income 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

Air transport

(1) Income derived from the operation of aircraft in international traffic by an enterprise of one of the Contracting States shall not be taxed in the other Contracting State.

(2) The provisions of paragraph (1) of this Article shall likewise apply in respect of participation in pools of any kind by enterprises engaged in air transport.

(3) For the purposes of this Article:

(*a*) interest on funds connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft; and

(*b*) the term "operation of aircraft" shall include transportation by air of persons, livestock, goods or mail, carried on by the owners or lessees or charterers of aircraft, including the sale of tickets for such transportation on behalf of other enterprises, the incidental lease of aircraft on a charter basis and any other activity directly connected with such transportation.

(4) Gains derived by an enterprise of a Contracting State from the alienation of aircraft owned and operated by the enterprise, the income from which is taxable only in that State, shall be taxed only in that State.

ARTICLE 9

Shipping

(1) Income of an enterprise of a Contracting State from the operation of ships in international traffic shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1) of this Article such income may be taxed in the other Contracting State from which it is derived provided that:

(*a*) the income is in respect of any one or more of the first ten fiscal years for which this Convention has effect;

(*b*) the tax chargeable on that income shall be 50 per cent of the tax which would have been chargeable in the absence of this Convention in respect of the income for the first five fiscal years for which this Convention has effect and 25 per cent of such tax for the next following five years.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income from journeys between places which are situated in a Contracting State.

(4) For the purposes of this Article, income from the operation of ships includes income derived from the rental on a bareboat basis of ships if such rental income is incidental to the income described in paragraph (1) of this Article.

(5) Notwithstanding the provisions of Article 7 (Business profits), the provisions of paragraphs (1), (2) and (3) of this Article shall likewise apply to income of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise.

(6) The provisions of this Article shall apply also to income derived from participation in a pool, a joint business or an international operating agency.

(7) Gains derived by an enterprise of a Contracting State from the alienation of ships or containers owned and operated by the enterprise shall be taxed only in that State if either the income from the operation of the alienated ships or containers was taxed only in that State, or the ships or containers are situated outside the other Contracting State at the time of the alienation.

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*) A dividend paid by a company which is a resident of the United Kingdom to a resident of India may be taxed in India.

(*b*) Where under paragraph (2) of this Article, a resident of India is entitled to a tax credit in respect of that dividend, 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 the dividend and the amount of the tax credit, at a rate not exceeding 15 per cent.

(*c*) Except as provided in sub-paragraph (*b*) of this paragraph, a dividend derived from a company which is a resident of the United Kingdom by a resident of India, who is the beneficial owner of that dividend, shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of India who receives a dividend 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 the beneficial owner of the dividend, be entitled to the tax credit in respect of that dividend which an individual resident in the United Kingdom would have been entitled to had he received that dividend, 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 beneficial owner 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 this purpose 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) A dividend paid by a company which is a resident of India to a resident of the United Kingdom may be taxed in the United Kingdom. The dividend may also be taxed in India but, where the dividend relates in whole or in part to a new contribution, the Indian tax so charged shall not exceed 15 per cent of the gross amount of the dividend attributable to the new contribution.

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

(6) The provisions of paragraphs (1), (2) and (3) or, as the case may be, paragraph (4) of this Article shall not apply if the beneficial owner of the dividend, being a resident of a Contracting State, has in the other Contracting State of which the company paying the dividend is a resident, a permanent establishment or fixed base with which the holding by virtue of which the dividend is paid is effectively connected. In such a case the provisions of Article 7 (Business profits) or Article 15 (Independent personal services), as the case may be, shall apply.

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

(8) As used in this Article the term "dividend" means income from 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 any other item (other than interest which falls within the provisions of Article 12) treated as a dividend or distribution under that law.

(9) As used in paragraph (4) of this Article the term "new contribution" means any share capital, other than bonus shares, issued after the date of entry into force of this Convention by a company which is a resident of India, and beneficially owned by a resident of the United Kingdom.

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, provided that where the resident of the other Contracting State is the beneficial owner of the interest and it is paid in respect of a loan or debt first created after the date of entry into force of this Convention, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2) of this Article:

(*a*) where the interest is paid to a bank carrying on a *bona fide* banking business which is a resident of the other Contracting State and is the beneficial owner of the interest, the tax charged in the Contracting State in which the interest arises shall not exceed 10 per cent of the gross amount of the interest;

(*b*) where the interest is paid to the Government of one of the Contracting States or a political subdivision or local authority of that State or the Reserve Bank of India, it shall not be subject to tax by the State in which it arises.

(4) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 (Business profits) or Article 15 (Independent personal services), as the case may be, shall apply.

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

(7) Where, owing to a special relationship between the payer and some other person, the amount of the interest paid exceeds for whatever reason the amount which would have been paid 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

Royalties and fees for technical services

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

(2) However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State; provided that where the royalties or fees for technical services are paid to a resident of the other Contracting State who is the beneficial owner thereof and they are paid in respect of a right or property which is first granted, or under a contract which is signed, after the date of entry into force of this Convention, the tax so charged shall not exceed 30 per cent of the gross amount of the royalties or fees for technical services.

(3) The term "royalties" as used in this Article means payments of any kind including rentals received as a consideration for the use of, or the right to use:

(*a*) any patent, trademark, design or model, plan, secret formula or process;

(*b*) industrial, commercial or scientific equipment, or information concerning industrial, commercial or scientific experience;

(*c*) any copyright of literary, artistic or scientific work, cinematographic films, and films or tapes for radio or television broadcasting;

but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of natural resources.

(4) The term "fees for technical services" as used in this Article means payments of any kind to any person, other than payments to an employee of the person making the payments and to any individual for independent personal services mentioned in Article 15 (Independent personal services), in consideration for services of a managerial, technical or consultancy nature, including the provision of services of technical or other personnel.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties or fees for technical services, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties or fees for technical services arise through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right, property or contract in respect of which the royalties or fees for technical services are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 (Business profits) or Article 15 (Independent personal services), as the case may be, shall apply.

(6) Royalties and fees for technical services 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 or fees for technical services, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to make the payments was incurred and the payments are borne by that permanent establishment or fixed base, then the royalties or fees for technical services shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(7) Where, owing to a special relationship between the payer and some other person, the amount of the royalties or fees for technical services paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14

Capital gains

Except as provided in Articles 8 (Air transport) and 9 (Shipping) of this Convention, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

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 may be taxed in that State. Such income may also be taxed in the other Contracting State if such services are performed in that other State and if:

(*a*) he is present in that other State for a period or periods aggregating 90 days in the relevant fiscal year; or

(*b*) he has a fixed base regularly available to him in that other State for the purpose of performing his activities;

but in each case only so much of the income as is attributable to those services.

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

ARTICLE 16

Dependent personal services

(1) Subject to the provisions of Article 17 (Directors' fees), 18 (Artistes and athletes), 19 (Governmental remuneration and pensions), 20 (Students and trainees) and 21 (Teachers), 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 the United Kingdom in respect of an employment exercised in India shall not be taxed in India if:

(*a*) he is present in India for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year;

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

(*c*) the remuneration is not deductible in computing the profits of an enterprise chargeable to Indian tax.

(3) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of India in respect of an employment exercised in the United Kingdom shall not be taxed in the United Kingdom if:

(*a*) he is present in the United Kingdom for a period or periods not exceeding in the aggregate 183 days during the relevant fiscal year;

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

(*c*) the remuneration is not deductible in computing the profits of an enterprise chargeable to United Kingdom tax.

(4) 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

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 18

Artistes and athletes

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

(2) Where income arising from personal activities as such exercised in a Contracting State by 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 (Business profits), 15 (Independent personal services) and 16 (Dependent personal services), be taxed in that Contracting State.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply if the visit to a Contracting State of the entertainer or the athlete is directly or indirectly supported, wholly or substantially, from the public funds of the other Contracting State, including a political subdivision or local authority of that other State.

ARTICLE 19

Governmental remuneration and pensions

(1) Remuneration, other than a pension, paid by the Government of India to any individual who is a national of India in respect of services rendered in the discharge of governmental functions in the United Kingdom shall be exempt from United Kingdom tax.

(2) Remuneration, other than a pension, paid by the Government of the United Kingdom to any individual who is a national of the United Kingdom in respect of services rendered in the discharge of governmental functions in India shall be exempt from Indian tax.

(3) Any pension paid by the Government of a Contracting State to any individual in respect of services rendered to that Government shall be taxable only in that Contracting State.

(4) The provisions of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 20

Students and trainees

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

(*a*) studying at a university or other accredited or 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 from a governmental, religious, charitable, scientific, literary or educational organisation;

shall not be subject to tax by that other Contracting State in respect of:

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

(ii) the 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 pounds sterling or its equivalent in Indian currency during any fiscal year.

(2) The exemptions under paragraph (1) of this Article shall only extend for such period of time as may be reasonably or customarily required for the purpose of the visit, but in no event shall any individual have the benefit of paragraph (1) of this Article for more than 5 years.

(3) An individual who is a resident of a Contracting State or was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State for a period not exceeding 12 months, as an employee of, or under contract with, a resident of the first-mentioned Contracting State, for the primary purpose of:

(*a*) acquiring technical, professional or business experience from a person other than that resident of the first-mentioned Contracting State; or

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

shall not be subject to tax by that other Contracting State on his income from personal services performed in the other Contracting State for that period in an amount not exceeding 1,500 pounds sterling or its equivalent in Indian currency.

(4) An individual who is a resident of a Contracting State or was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State for a period not exceeding 12 months as a participant in a programme sponsored by the Government of the other Contracting State, for the primary purpose of training, research or study, shall not be subject to tax by that other Contracting State in respect of payments made by the Government of the first-mentioned Contracting State for the purposes of his maintenance, training, research, or study.

ARTICLE 21

Teachers

(1) An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college or other recognised educational institution in that State, and who was immediately before that visit a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.

(2) This Article shall only apply to income from research if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 22

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*) Indian tax payable under the laws of India and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within India (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 Indian tax is computed.

(*b*) In the case of a dividend paid by a company which is a resident of India 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 Indian tax for which credit may be allowed under the provisions of sub-paragraph (*a*) of this paragraph) the Indian tax payable by the company in respect of the profits out of which such dividend is paid.

Provided that this paragraph shall not apply to a company which is a resident of the United Kingdom and is a Petroleum Company as defined for the purposes of Schedule 9 to the Oil Taxation Act 1975**(a)**.

(2) Subject to the provisions of the law of India regarding the allowance as a credit against Indian tax of tax payable in a territory outside India (which shall not affect the general principle hereof), the amount of United Kingdom tax payable, under the laws of the United Kingdom and in accordance with the provisions of this Convention, whether directly or by deduction, by a resident of India, in respect of income from sources within the United Kingdom which has been subjected to tax both in India and

(a) 1975 c. 22.

the United Kingdom shall be allowed as a credit against the Indian tax payable in respect of such income but in an amount not exceeding that proportion of Indian tax which such income bears to the entire income chargeable to Indian tax. In no case shall credit for United Kingdom tax be given against the additional income-tax on undistributed income of companies.

For the purposes of the credit referred to in this paragraph, where the resident of India is a company by which surtax is payable, the credit to be allowed against Indian tax shall be allowed in the first instance against the income-tax payable by the company in India and, as to the balance, if any, against the surtax payable by it in India.

(3) For the purposes of paragraph (1) of this Article the term "Indian tax payable" shall be deemed to include any amount which would have been payable as Indian tax but for a deduction allowed in computing the taxable income or an exemption or reduction of tax granted for that year under:

(*a*) sections 10(4), 10(4A), 10(6) (viia), 10(15) (iv), 32A, 33A, 35B, 35CC, 80HH, 80J and 80K of the Income-tax Act, 1961 (43 of 1961), 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; or

(*b*) any other provision which may subsequently be made granting an exemption or reduction from 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 relates to a period starting more than 10 fiscal years after the exemption from, or reduction of, Indian tax is first granted to the resident of the United Kingdom or to the resident of India, as the case may be, in respect of that source.

(4) Income which in accordance with the provisions of this Convention is not to be subjected to tax in a Contracting State may be taken into account for calculating the rate of tax to be imposed in that Contracting State on other income.

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

(6) 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 enterprises dealing wholly independently with each other, 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 paragraph (2) of this Article.

(7) For the purposes of this Article the term "in accordance with the provisions of this Convention" shall include taxes which are the subject of this Convention and imposed on income not expressly mentioned in the Convention.

ARTICLE 23

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 in the same circumstances or under the same conditions. This provision shall not be construed as preventing a Contracting State from charging the profits of a permanent establishment which an enterprise of the other Contracting State has in the first-mentioned State at a rate of tax which is higher than that imposed on the profits of a similar enterprise of the first-mentioned Contracting State, nor as being in conflict with the provisions of paragraph (4) of Article 7 of this Convention.

(3) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals not resident in that State any personal allowances, reliefs and reductions for taxation purposes which are by law available only to individuals who are so resident.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned 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.

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

ARTICLE 24

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this 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 25

Exchange of information

The competent authorities of the Contracting States shall exchange such information (being information and documents which are at their disposal under their respective taxation laws and obtained 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 or documents 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 or documents shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 26

Diplomatic and consular officials

(1) 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.

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

ARTICLE 27

Entry into force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

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

(i) in respect of 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 later of the notifications is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the later of the notifications is given;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the later of the notifications is given;

(iv) in respect of development land tax, for any realised development value accruing on or after 1 April in the calendar year next following that in which the later of the notifications is given;

(*b*) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the later of the notifications is given.

ARTICLE 28

Termination

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

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

(i) in respect of 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) in respect of 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;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given;

(iv) in respect of development land tax, for any realised development value accruing on or after 1 April in the calendar year next following that in which the notice is given; and

(*b*) in India, in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the notice is given.

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

Done on this 16th day of April, 1981, in New Delhi on two original copies each in the Hindi and English languages, both texts being equally authentic. In case of divergence between the two texts, the English text shall be the operative one.

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

J. A. THOMSON.

For the Government of India:

G. RAMACHANDRAN.

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with India scheduled to this Order air transport profits, certain trading profits not arising through a permanent establishment and the earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence. Where an enterprise which is a resident of one country carries on business through a permanent establishment in the other, the profits of the enterprise which are attributable to that permanent establishment may be taxed in that other country.

Income from the operation of ships is to be taxed only in the country of the taxpayer's residence unless the income arises during the first ten years for which the Convention has effect in which case the income may be taxed in the country from which it is derived. For the first five years the tax charged in the country of source is limited to 50 per cent of the tax which would have been charged in the absence of the Convention and for the next five years to 25 per cent of such tax.

Governmental remuneration and pensions are normally to be taxed by the paying Government only. The remuneration of visiting teachers and certain payments made to visiting students and trainees will, subject to certain conditions, be exempt in the country visited.

Income from immovable property may be taxed in the country in which the property is situated. Capital gains may be taxed by either country in accordance with its domestic law.

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 India is to include credit for tax spared under certain provisions of Indian law.

The Convention provides that where a United Kingdom company pays a dividend to a resident of India (other than to a company which controls 10 per cent or more of the voting power in the paying company), the recipient will, subject to certain conditions, receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. In the case of a dividend paid by an Indian company to a resident of the United Kingdom the tax charged in India is not to exceed 15 per cent where the dividend is paid in respect of a new investment made after the date of entry into force of the Convention.

The rate of tax to be imposed by the country of source on interest paid to a resident of the other country in respect of a loan first made after the date of entry into force of the Convention is, in general, not to exceed 15 per cent of the gross amount of the interest. In the case of interest paid to a bank the rate of tax in the country of source is not to exceed 10 per cent irrespective of the date the loan was made. Any interest paid to the Government or a local authority of either country is to be exempt in the country of source.

The rate of tax in the country of source on royalties and fees for technical services flowing to the other country in respect of rights first granted or contracts first signed after the date of entry into force of the Convention is not to exceed 30 per cent.

There are also provisions for safeguarding residents of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the competent authorities of the two countries.

The Convention is to take effect in the United Kingdom from the year of assessment or financial year beginning in April in the calendar year following that in which each country has notified the other that the necessary procedures have been completed to bring the Convention into force.

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