*Draft Order in Council laid before the House of Commons under the Income and Corporation Taxes Act 1988, s788(10), for an Address to Her Majesty from that House praying that the Order be made.*

DRAFT STATUTORY INSTRUMENTS

# 2002 No.

# INCOME TAX

## The Double Taxation Relief (Taxes on Income) (Taiwan) Order 2002

*Made - - - - 2002*

At the Court at , the day of 2002

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 788(10) of the Income and Corporation Taxes Act 1988(**1**), 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 788 of the said Act, 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) (Taiwan) Order 2002.

**2.** It is hereby declared—

(a) that the arrangements specified in the Agreement set out in Part I of the Schedule to this Order and in the Annex constituting an Agreement set out in Part II of that Schedule have been made in relation to the territory of Taiwan 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 Taiwan;

(b) that those arrangements include provisions with respect to the exchange of information necessary for carrying out the domestic laws of the United Kingdom and the laws of Taiwan concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and

(**1**) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992(c. 12).

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

Clerk of the Privy Council

SCHEDULE

# PART I

## AGREEMENT BETWEEN THE BRITISH TRADE AND CULTURAL OFFICE, TAIPEI AND THE TAIPEI REPRESENTATIVE OFFICE IN THE UNITED KINGDOM FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

The British Trade and Cultural Office, Taipei and the Taipei Representative Office in the United Kingdom, hereinafter referred to as the BTCO and the TRO;

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

Have agreed as follows:

### ARTICLE 1

**Persons covered**

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

### ARTICLE 2

**Taxes covered**

(1) This Agreement shall apply to taxes on income and on capital gains imposed in either of the territories, irrespective of the manner in which they are levied.

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

(3) The existing taxes to which this Agreement shall apply are in particular:

(a) in the territory in which the taxation law administered by the United Kingdom Inland Revenue is applied:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

(b) in the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied:

(i) the profit seeking enterprise income tax; and

(ii) the individual consolidated income tax.

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

### ARTICLE 3

**General definitions**

(1) For the purposes of this Agreement, unless the context otherwise requires:

(a) the term "territory" means the territory referred to in paragraph (3)(a) or (3)(b) of Article 2 of this Agreement, as the case requires, and "other territory" and "territories" shall be construed accordingly;

(b) the term "person" includes an individual, a company and any other body of persons, and subject to paragraph (2) of this Article does not include a partnership;

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

(d) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory;

(e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a territory, except when the ship or aircraft is operated solely between places in the other territory;

(f) the term "competent authority" means:

(i) in the case of the territory in which the taxation law administered by the United Kingdom Inland Revenue is applied, the Commissioners of Inland Revenue or their authorised representative;

(ii) in the case of the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, the Director-General of the Department of Taxation or his authorised representative.

(2) A partnership deriving its status from the law of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement which is treated as a taxable unit under the taxation law of that territory, shall be treated as a person for the purposes of the Agreement.

(3) As regards the application of this Agreement at any time in a territory, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the laws of that territory for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

## ARTICLE 4

### Residence

(1) For the purposes of this Agreement, the term "resident of a territory" means any person who, under the laws of that territory, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature.

(2) A person is not a resident of a territory for the purposes of this Agreement if that person is liable to tax in that territory in respect only of income or capital gains from sources in that territory, provided that this paragraph shall not apply to individuals who are residents of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement, as long as resident individuals are taxed only in respect of income from sources in that territory.

(3) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both territories, then his status shall be determined in accordance with the following rules:

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

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

(c) if the individual has an habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.

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

ARTICLE 5

**Permanent establishment**

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

(2) The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

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

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than six months.

(4) An enterprise of a territory shall be deemed to have a permanent establishment in the other territory if:

(a) it carries on supervisory activities in that other territory for more than six months in connection with a building site or construction or installation project which is being undertaken in that other territory.

(b) it furnishes services, including consultancy services, but only where activities of that nature continue, for the same or a connected project, through employees or other personnel or persons engaged by the enterprise for such purpose in the other territory for a period or periods aggregating more than six months within any twelve month period.

(5) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, 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 of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

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

(6) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person is acting in a territory on behalf of an enterprise of the other territory—other than an agent of an

independent status to whom paragraph (7) of this Article applies—the enterprise shall be deemed to have a permanent establishment in the first-mentioned territory in respect of any activities which that person undertakes for the enterprise if the person has, and habitually exercises in that territory, an authority to conclude contracts on behalf of the enterprise, unless the person's activities are limited to those mentioned in paragraph (5) of this Article which, if exercised through a fixed place of business would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

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

(8) The fact that a company which is a resident of a territory controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (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 derived by a resident of a territory from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

(2) The term "immovable property" shall have the meaning which it has under the law of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture 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 independent personal services.

ARTICLE 7

**Business profits**

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

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the territory 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) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

ARTICLE 8

**Shipping and air transport**

(1) Profits of an enterprise of a territory from the operation of ships or aircraft in international traffic shall be taxable only in that territory.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

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

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

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

(3) The provisions of paragraph (1) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

ARTICLE 9

**Associated enterprises**

(1) Where:

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

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

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

(2) Where a territory includes in the profits of an enterprise of that territory—and taxes accordingly—profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the territories shall if necessary consult each other.

## ARTICLE 10

### Dividends

(1) Dividends paid by a company which is a resident of a territory to a resident of the other territory may be taxed in that other territory.

(2) However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory, the tax so charged shall not exceed 10 per cent. of the gross amount of the dividends. The competent authorities of the territories shall by mutual agreement settle the mode of application of this limitation.

(3) The term "dividends" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the territory of which the company making the distribution is a resident and also includes any other item which, under the laws of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

(5) Where a company which is a resident of a territory derives profits or income from the other territory, that other territory 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 territory 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 territory, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other territory.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.

## ARTICLE 11

### Interest

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

(2) However, such interest may also be taxed in the territory in which it arises and according to the laws of that territory, but if the beneficial owner of the interest is a resident of the other territory, the tax so charged shall not exceed 10 per cent. of the gross amount of the interest. The competent authorities of the territories shall by mutual agreement settle the mode of application of this limitation.

(3) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

(4) The provisions of paragraphs (1), (2) and (8) of this Article shall not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory in which the interest arises, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

(5) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such case, the excess part of the payments shall remain taxable according to the laws of each territory, due regard being had to the other provisions of this Agreement.

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

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

(8) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a territory shall be exempt from tax in that territory if:

(a) it is paid to and beneficially owned by the other territory or a local authority thereof, or any agency or instrumentality of that other territory or local authority thereof; or

(b) it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by an approved agency or instrumentality of that other territory.

(9) For the purposes of paragraph (8)(b) of this Article the term "approved agency or instrumentality" means:

(a) in the case of the territory referred to in paragraph (3)(a) of Article 2 of this Agreement, the Export Credits Guarantee Department and such other agencies and instrumentalities of that territory as may be agreed from time to time between the competent authorities;

(b) in the case of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement, such agencies and instrumentalities of that territory as may be agreed from time to time between the competent authorities .

ARTICLE 12

**Royalties**

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

(2) However, those royalties may also be taxed in the territory in which they arise, and according to the law of that territory, but if the beneficial owner of the royalties is a resident of the other territory, the tax so charged shall not exceed 10 per cent. of the gross amount of the royalties. The competent authorities of the territories shall by mutual agreement settle the mode of application of this limitation.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific

work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.

(4) The provisions of paragraph (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a territory, carries on business in the other territory in which the royalties arise, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a territory when the payer is an authority of that territory or a subdivision or local authority of that territory or a person who is a resident of that territory for the purposes of its tax. Where, however, the person paying the royalties, whether the person is a resident of a territory or not, has in a territory a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the territory in which the permanent establishment or fixed base is situated.

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each territory, due regard being had to the other provisions of this Agreement.

(7) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

ARTICLE 13

**Capital gains**

(1) Gains derived by a resident of a territory from the alienation of immovable property referred to in Article 6 of this Agreement and situated in the other territory may be taxed in that other territory.

(2) Gains derived by a resident of a territory from the alienation of:

(a) shares, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other territory, or

(b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other territory, or of shares referred to in sub-paragraph (a) of this paragraph,

may be taxed in that other territory.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or of movable property pertaining to a fixed base available to a resident of a territory in the other territory for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other territory.

(4) Gains derived by a resident of a territory from the alienation of ships or aircraft operated in international traffic by an enterprise of that territory or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that territory.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3), and (4) of this Article shall be taxable only in the territory of which the alienator is a resident.

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

ARTICLE 14

**Independent personal services**

(1) Income derived by a resident of a territory in respect of professional services or other activities of an independent character shall be taxable only in that territory except in the following circumstances, when such income may also be taxed in the other territory:

(a) if he has a fixed base regularly available to him in the other territory for the purpose of performing his activities; in that case, only so much of the income as is attributable to that fixed base may be taxed in that other territory; or

(b) if his stay in the other territory is for a period or periods amounting to or exceeding in the aggregate 183 days in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other territory may be taxed in that other territory.

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

ARTICLE 15

**Dependent personal services**

(1) Subject to the provisions of Articles 16, 18 and 19 of this Agreement, salaries, wages and other similar remuneration derived by a resident of a territory in respect of an employment shall be taxable only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

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

(a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

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

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

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic may be taxed in the territory of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16

**Directors' fees**

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

ARTICLE 17

**Artistes and sportsmen**

(1) Notwithstanding the provisions of Articles 14 and 15 of this Agreement, income derived by a resident of a territory as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other territory, may be taxed in that other territory.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Agreement, be taxed in the territory in which the activities of the entertainer or sportsman are exercised.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to income derived by entertainers or sportsmen who are residents of a territory from their personal activities as entertainers or sportsmen exercised in the other territory if their visit to that other territory is wholly or substantially supported from the public funds of the first-mentioned territory. In such a case, the income shall be taxable only in the territory of which the entertainer or sportsman, as the case may be, is a resident.

ARTICLE 18

**Pensions and annuities**

(1) Subject to the provisions of paragraph (2) of Article 19 of this Agreement:

(a) pensions and other similar remuneration paid in consideration of past employment, and

(b) any annuity paid,

to an individual who is a resident of a territory, and is subject to tax in respect thereof in that territory, shall be taxable only in that territory.

(2) The term "annuity" means a stated sum payable to an individual periodically at stated times during his 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.

(3) Notwithstanding the provisions of paragraph (1) of this Article, a lump-sum payment beneficially owned by a resident of a territory from a pension scheme established in the other territory shall be taxable only in that other territory.

ARTICLE 19

**Public service**

(a) Salaries, wages and other similar remuneration, other than a pension or annuity, paid by an authority administering a territory or a subdivision thereof, or by a local authority of that territory to an individual in respect of services rendered in the discharge of public or administrative functions on behalf of such an authority shall be taxable only in that territory.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, such salaries, wages and other similar remuneration shall be taxable only in the other territory if the services are rendered in that territory and the individual is a resident of that territory who:

(i) is a citizen or national of that territory; or

(ii) did not become a resident of that territory solely for the purpose of rendering the services.

(a) (2) (a) Any pension or annuity paid by, or out of funds created by, a territory or a political subdivision or a local authority thereof to an individual in respect of services rendered to that territory or subdivision or authority shall be taxable only in that territory.

(b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, such pension or annuity shall be taxable only in the other territory if the individual is a resident of, and a citizen or national of, that territory.

(3) The provisions of Articles 15, 16, 17 and 18 of this Agreement shall apply to salaries, wages and other similar remuneration, and to pensions or annuities, in respect of services rendered in connection with a business carried on by any authority referred to in paragraph (1) of this Article.

ARTICLE 20

**Students**

Where a student, who is a resident of a territory or who was a resident of that territory immediately before visiting the other territory and who is temporarily present in that other territory solely for the purpose of the student's education, receives payments from sources outside that other territory for the purpose of the student's maintenance or education, those payments shall be exempt from tax in that other territory.

ARTICLE 21

**Other income**

(1) Items of income, wherever arising, beneficially owned by a resident of a territory, which are not dealt with in the foregoing Articles of this Agreement, shall be taxable only in that territory.

(2) However, any such income derived by a resident of a territory from sources in the other territory may also be taxed in that other territory.

(3) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Agreement, if the recipient of such income, being a resident of a territory, carries on business in the other territory through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

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

ARTICLE 22

**Elimination of double taxation**

(1) Subject to the provisions of the law of the territory referred to in paragraph (3)(a) of Article 2 of this Agreement regarding the allowance as a credit against its tax of tax payable in another territory (which shall not affect the general principle hereof):

(a) Tax payable under the laws of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within that territory (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 tax payable under the laws of the territory referred to in paragraph (3)(a) of Article 2 of this Agreement computed by reference to the same profits, income or chargeable gains by reference to which the first mentioned tax is computed;

(b) in the case of a dividend paid by a company which is a resident of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement to a company which is a resident of the territory referred to in paragraph (3)(a) of Article 2 of this Agreement 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 tax payable under the laws of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the tax payable under the laws of that territory by the company in respect of the profits out of which such dividend is paid.

(2) In the case of the territory referred to in paragraph (3)(b) of Article 2 of this Agreement, double taxation shall be avoided as follows:

Tax payable under the laws of the territory referred to in paragraph (3) (a) of Article 2 of this Agreement and in accordance with this Agreement (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 the tax payable under the laws of the territory referred to in paragraph (3) (b) of Article 2 of this Agreement. The amount of credit, however, shall not exceed the amount of the tax referred to in paragraph (3) (b) of Article 2 of this Agreement on that income computed in accordance with its tax laws.

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

ARTICLE 23

**Limitation of relief**

(1) Where under any provision of this Agreement any income or gains are relieved from tax in a territory and, under the law in force in the other territory an individual, in respect of that income or those gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof, then the relief to be allowed under this Agreement in the first-mentioned territory shall apply only to so much of the income or gains as is taxed in the other territory.

(2) Notwithstanding the provisions of any other Article of this Agreement, a resident of a territory who, as a consequence of domestic law concerning incentives to promote foreign investment, is not subject to tax or is subject to tax at a reduced rate in that territory on income or capital gains, shall not receive the benefit of any reduction in or exemption from tax provided for in this Agreement by the other territory if the main purpose or one of the main purposes of such resident or a person connected with such resident was to obtain the benefits of this Agreement.

(3) Where, under any provision of this Agreement, a partnership is entitled, as a resident of the territory referred to in paragraph (3) (b) of Article 2 of this Agreement, to relief from tax in the territory referred to in paragraph (3) (a) of Article 2 of this Agreement on any income or capital gains, that provision shall not be construed as restricting the right of the territory referred to in paragraph (3) (a) of Article 2 of this Agreement to tax any member of the partnership who is a resident of the territory referred to in paragraph (3) (a) of Article 2 of this Agreement on his share of such income or capital gains; but any such income or gains shall be treated for the purposes of Article 22 of this Agreement as income or gains from sources in the territory referred to in paragraph (3) (b) of Article 2 of this Agreement.

ARTICLE 24

**Non-discrimination**

(1) Citizens or nationals of a territory shall not be subjected in the other territory to any taxation or any requirement connected therewith, which is other or more burdensome than the

taxation and connected requirements to which citizens or nationals of that other territory in the same circumstances, in particular with respect to residence, are or may be subjected.

(2) A legal person, partnership or association deriving its status as such from the law in one of the territories shall not be subjected in the other territory to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which a legal person, partnership or association deriving its status as such from the law in force in that other territory in the same circumstances, in particular with respect to residence, is or may be subjected.

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

(4) Except where the provisions of paragraph (1) of Article 9, paragraphs (5) or (7) of Article 11, paragraph (6) or (7) of Article 12, or paragraph (4) of Article 21 of this Agreement apply, interest, royalties and other disbursements paid by an enterprise of a territory to a resident of the other territory shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned territory.

(5) Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned territory are or may be subjected.

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

(7) The provisions of this Article shall apply to the taxes which are the subject of this Agreement.

ARTICLE 25

**Mutual agreement procedure**

(1) Where a resident of a territory considers that actions in one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident or, if his case comes under paragraph (1) of Article 24 of this Agreement, to that of the territory in which he is a citizen or national or, if his case comes under paragraph (2) of Article 24 of this Agreement, to that of the territory in which he derives his status as a legal person, partnership or association.

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

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

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

ARTICLE 26

**Exchange of information**

(1) The competent authorities of the territories shall exchange such information as is necessary for carrying out the provisions of this Agreement or of the domestic laws of the territories concerning

taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Agreement. Any information received by a territory shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on a competent authority of a territory the obligation:

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

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

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

ARTICLE 27

**Entry into force**

The BTCO and the TRO shall each notify to the other the completion of the procedures required by the law of their respective territories for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the territory in which the taxation laws administered by the United Kingdom Inland Revenue are applied:

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

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which this Agreement enters into force;

(b) in the territory in which the taxation laws administered by the Department of Taxation, Ministry of Finance, Taipei are applied, in relation to income, profits or gains of any year of income beginning on or after 1st January in the calendar year next following the date on which the Agreement enters into force.

ARTICLE 28

**Termination**

This Agreement shall remain in force until terminated by the BTCO or the TRO. Either the BTCO or the TRO may terminate this Agreement, by giving notice of termination to the other at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of this Agreement. In such event, this Agreement shall cease to have effect:

(a) in the territory in which the taxation laws administered by the United Kingdom Inland Revenue are applied:

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

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

(b) in the territory in which the taxation laws administered by the Department of Taxation, Ministry of Finance, Taipei are applied, in relation to income, profits or gains of any year of income beginning on or after 1st January in the calendar year next following that in which the notice of termination is given.

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

Done in duplicate at London this 8th day of April 2002 in the English and Chinese languages, both texts being equally authentic. In the case of any divergence of meaning between the two texts, the English text shall prevail.

# PART II

ANNEX

## THE BRITISH TRADE AND CULTURAL OFFICE, TAIPEI AND THE TAIPEI REPRESENTATIVE OFFICE IN THE UNITED KINGDOM;

Having regard to the Agreement for the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and on capital gains signed at London this 8th day of April 2002 (in this Annex called the Agreement);

Have agreed that the following provisions shall form an integral part of the Agreement:

With respect to the territory in which the taxation law administered by the Department of Taxation, Ministry of Finance, Taipei is applied, it is understood that nothing in the Agreement affects the imposition of the Land Value Increment Tax.

The remuneration, pensions, or annuities of staff of the Taipei Representative Office in the United Kingdom and of the British Trade and Cultural Office, Taipei shall be dealt with under the terms of Article 19 of the Agreement.

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

Done in duplicate at London this 8th day of April 2002 in the English and Chinese languages, both texts being equally authentic. In the case of any divergence of meaning between the two texts, the English text shall prevail.

For the British Trade and Cultural Office, Taipei

*David Coates*
Director-General, British Trade and Cultural Office, Taipei

For the Taipei Representative Office in the United Kingdom

*Wen-hua Tzen*
Representative, Taipei Representative Office in the United Kingdom

For the British Trade and Cultural Office, Taipei

*David Coates*
Director-General, British Trade and Cultural Office, Taipei

For the Taipei Representative Office in the United Kingdom

*Wen-hua Tzen*
Representative, Taipei Representative Office in the United Kingdom

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## EXPLANATORY NOTE

*(This Note is not part of the Order)*

The Agreement in relation to the territory of Taiwan is set out in Part I of the Schedule to this Order.

The Agreement provides for business profits not arising through a permanent establishment to be taxed only in the territory of the taxpayer's residence. Profits attributable to a permanent establishment may be taxed in the territory in which the permanent establishment is situated (Articles 5 and 7).

Income from immovable property may be taxed in the territory in which the property is situated (Article 6).

International shipping and air transport profits are generally to be taxed only in the territory of residence of the operator (Article 8).

The Agreement includes rules for determining taxable profits when a company in one territory is related to a company in the other (Article 9).

The rate of tax imposed in the territory of source on dividends derived and beneficially owned by a resident of the other territory is not to exceed 10 per cent. of the gross amount of the dividends (Article 10).

The rate of tax imposed in the territory of source on interest derived by a resident of the other territory is not to exceed 10 per cent. of the interest flowing to the other territory. Certain categories of interest (e.g. interest paid to and beneficially owned by the other territory) will be exempt from tax in the source territory (Article 11).

The rate of tax imposed in the territory of source on royalties flowing to and beneficially owned by a resident of the other territory shall not exceed 10 per cent. of the gross amount of royalties paid (Article 12).

Capital gains arising from the disposal of movable property are normally to be taxed only in the territory of the taxpayer's residence. Gains arising from the disposal of immovable property situated in the other territory and assets of a permanent establishment or fixed base which the taxpayer has in the other territory may be taxed in that other territory (Article 13).

The earnings of temporary business visitors and some other individuals are, subject to certain conditions, to be taxed only in the territory of the taxpayer's residence (Articles 14 and 15).

Fees received by a resident of one territory in his capacity as a director of a company resident in the other territory may be taxed in the latter territory (Article 16).

Income derived from the activities of artistes and sportsmen may, with certain exemptions, be taxed in the territory in which those activities are exercised (Article 17).

Occupational pensions (other than those paid in respect of public service) and annuities are to be taxed only in the recipient's territory of residence (Article 18). Public service remuneration and pensions are normally taxable only by the paying territory (Article 19).

Subject to certain conditions, payments made to visiting students are to be exempt from tax in the territory visited (Article 20).

Other income not specified in the Agreement may be taxed by the territory of which the beneficial owner is a resident and by the territory in which it arises, if different (Article 21).

In general where income continues to be taxable in both countries, credit will be given by the territory of the taxpayer's residence in respect of tax imposed by the other territory (Article 22).

There are provisions safeguarding citizens or nationals and enterprises of one territory against discriminatory taxation in the other territory (Article 24). Provision is made for consultation and exchange of information between the competent authorities of the two territories (Articles 25 and 26).

The Annex set out in Part II of the Schedule clarifies the intended interpretation of particular aspects of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by the signatories (the British Trade and Cultural Office, Taipei and the Taipei Representative Office in the United Kingdom) of the completion of the legislative procedures in each territory. The Agreement is to take effect in the United Kingdom on or after 1st April in respect of corporation tax, on or after 6th April for income tax and capital gains tax in the calendar year next following that in which it enters into force. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes.*