
STATUTORY INSTRUMENTS

1984 No. 363

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Falkland Islands) Order 1984

Laid before the House of Commons in draft

Made - - - - 14th March 1984

At the Court at Buckingham Palace, the 14th day of March 1984

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 said 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) (Falkland Islands) Order 1984.

2. It is hereby declared—

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

ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FALKLAND ISLANDS 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 the Falkland Islands;

Desiring to conclude an Arrangement 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:

Personal scope

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

Taxes covered

2.—(1) The taxes which are the subject of this Arrangement are:

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

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;

(hereinafter referred to as “United Kingdom tax”);

(b) in the Falkland Islands:

- (i) the income tax, including the tax on royalties and management fees; and
- (ii) the interest withholding tax;

(hereinafter referred to as “Falkland Islands tax”).

(2) This Arrangement shall also apply to any identical or substantially similar taxes which are imposed by either territory after the date upon which this Arrangement has effect in that territory 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 are made in their respective taxation laws.

General definitions

3.—(1) In this Arrangement, 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 “Falkland Islands” means the Falkland Islands, including the Continental Shelf adjacent thereto;
- (c) the terms “a territory” and “the other territory” mean the United Kingdom or the Falkland Islands as the context requires;
- (d) the term “person” comprises an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) 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;
- (g) 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 territory, except when the ship or aircraft is operated solely between places in the other territory;
- (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 the Falkland Islands the Commissioner of Income Tax or his authorised representative.

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

Fiscal domicile

4.—(1) For the purposes of this Arrangement, the term “resident of a territory” means any person who, under the law of that territory, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that territory in respect only of income from sources in that territory or capital situated therein.

(2) Where by reason of the provisions of sub-paragraph (1) of this Paragraph an individual is a resident of both territories, then his status shall be determined as follows:

- (a) he shall be deemed to be a resident 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 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 has not a permanent home available to him in

either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

- (c) if he 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.

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

Permanent establishment

5.—(1) For the purposes of this Arrangement, 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 exploration, extraction or exploitation of natural resources; and
- (g) an installation or structure used for the exploration or exploitation of natural resources.

(3) A building site, a construction, assembly or installation project or supervisory activities connected therewith constitute a permanent establishment but only where such site, project or activities continue for more than six months.

(4) Notwithstanding the preceding provisions of this Paragraph, 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 paragraphs (a) to (e) of this sub-paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of sub-paragraphs (1) and (2) of this Paragraph, where a person, other than an agent of an independent status to whom sub-paragraph (6) applies, is acting on behalf of an enterprise and has, and habitually exercises, in a territory an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that territory in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in sub-paragraph (4) of this Paragraph which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that sub-paragraph.

(6) 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.

(7) 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.

Income from immovable property

6.—(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 sub-paragraph (1) of this Paragraph shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of sub-paragraphs (1) and (3) of this Paragraph 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.

Business profits

7.—(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 sub-paragraph (3), 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 an allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the territory in which the permanent establishment is situated or elsewhere.

(4) Insofar as it has been customary in a territory 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 sub-paragraph (2) shall preclude that territory from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however, be such that the result will be in accordance with the principles contained in this Paragraph.

(5) For the purposes of the preceding sub-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) 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.

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

(8) Where under the provisions of this Paragraph profits are attributable to a permanent establishment situated in a territory and those profits are remitted in whole or in part out of that territory, then the profits so remitted shall not be subject to any greater charge to tax in that territory than if they had not been so remitted.

Shipping and air transport

8.—(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the territory in which the place of effective management of the enterprise is situated.

(2) If the place of effective management of a shipping enterprise is aboard a ship then it shall be deemed to be situated in the territory in which the home harbour of the ship is situated, or, if there is no such home harbour, in the territory of which the operator of the ship is a resident.

(3) The provisions of sub-paragraph (1) of this Paragraph shall also apply to profits from the participation in a pool, a joint business or a joint operating agency.

Associated enterprises

9.—(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 Arrangement and the competent authorities of the territories shall if necessary consult each other.

Dividends

10.—(1) Dividends derived from a company which is a resident of the Falkland Islands by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in the Falkland Islands, but where they are beneficially owned by a resident of the United Kingdom they shall be exempt from any tax in the Falkland Islands which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company. For the purposes of this sub-paragraph, where the beneficial owner of the dividend is entitled to a tax credit in respect of dividends paid by a company resident in the Falkland Islands, then any tax not exceeding the amount of that tax credit chargeable in the Falkland Islands on the aggregate of the amount or value of that dividend and the amount or value of that tax credit shall not be regarded as a tax chargeable on dividends in addition to tax chargeable in respect of the profits or income of the company paying the dividend.

- (2) (a) Dividends derived from a company which is a resident of the United Kingdom by a resident of the Falkland Islands may be taxed in the Falkland Islands.
- (b) Where a resident of the Falkland Islands is entitled to a tax credit in

respect of such a dividend under sub-paragraph (3) of this Paragraph tax may also be charged in the United Kingdom and according to the laws of the United Kingdom on the aggregate amount or value of that dividend and tax credit at a rate not exceeding 15 per cent.

- (c) Except as aforesaid dividends derived from a company which is a resident of the United Kingdom and beneficially owned by a resident of the Falkland Islands shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(3) A resident of the Falkland Islands who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (4) of this Paragraph and provided that he is the beneficial owner of the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends and to the payment of any excess of that tax credit over his liability to the United Kingdom tax.

(4) Sub-paragraph (3) of this Paragraph shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends. For the purposes of this sub-paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

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

(6) The provisions of sub-paragraphs (1) and (2) of this Paragraph 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 Paragraph 7 or Paragraph 16, as the case may be, shall apply.

(7) 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.

Interest

11.—(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 law of that territory; but where the beneficial owner of such interest is a resident of the other territory tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of sub-paragraph (2) of this Paragraph, interest arising in a territory shall be exempt from tax in that territory if it is derived and beneficially owned by the Government of the other territory or a local authority thereof or any agency or instrumentality of that Government or local authority.

(4) Notwithstanding the provisions of Paragraph 7 and of sub-paragraph (2) of this Paragraph, interest arising in the Falkland Islands which is paid to and beneficially owned by a resident of the United Kingdom shall be exempt from Falkland Islands tax if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the United Kingdom Export Credits Guarantee Department.

(5) The term “interest” as used in this Paragraph 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 distribution under the provisions of Paragraph 10 of this Arrangement.

(6) The provisions of sub-paragraphs (1) and (2) of this Paragraph 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 Paragraph 7 or Paragraph 16, as the case may be, shall apply.

(7) Interest shall be deemed to arise in a territory when the payer is that territory itself, a political subdivision, a local authority or a resident of that territory. Where, however, the person paying the interest, whether he 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 that permanent establishment or fixed base, then such interest shall be deemed to arise in that territory.

(8) 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 Paragraph shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each territory, due regard being had to the other provisions of this Arrangement.

Royalties (other than mineral royalties)

12.—(1) Royalties arising in a territory and paid to a resident of the other territory who is the beneficial owner thereof shall be taxable only in that other territory.

(2) The term “royalties” as used in this Paragraph means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but does not include royalties or other amounts paid in respect of the right to work, extract or remove natural resources.

(3) The provisions of sub-paragraph (1) of this Paragraph 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 Paragraph 7 or Paragraph 16, as the case may be, shall apply.

(4) Royalties shall be deemed to arise in a territory when the payer is that territory itself, a political subdivision, a local authority or a resident of that territory. Where, however, the person paying the royalties, whether he 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 that permanent establishment or fixed base, then such royalties shall be deemed to arise in that territory.

(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 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 Paragraph 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 Arrangement.

Mineral royalties

13. Each territory may tax royalties or other amounts paid in respect of the right to work, extract or remove natural resources in accordance with the provisions of its domestic law.

Management fees

14.—(1) Management fees arising in a territory and paid to a resident of the other territory may be taxed in that other territory.

(2) However, such fees may also be taxed in the territory in which they arise,

and according to the law of that territory; but where the beneficial owner of such fees is a resident of the other territory the tax so charged shall not exceed 15 per cent of the gross amount of the fees.

(3) The term “management fees” as used in this Paragraph means payments of any kind to any person, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial, scientific or commercial advice, or management or technical services, or similar services or facilities but it does not include payments for independent personal services mentioned in Paragraph 16.

(4) If a resident of a territory, who derives and beneficially owns management fees which arise in the other territory, so elects for any year of assessment or financial year, the tax chargeable in respect of those management fees in the territory in which they arise shall be calculated as if those fees were taxable in accordance with Paragraph 7 as profits attributable to a permanent establishment.

(5) The provisions of sub-paragraphs (1), (2) and (4) of this Paragraph shall not apply if the beneficial owner of the management fees, being a resident of a territory, carries on business in the other territory in which the fees arise, through a permanent establishment situated therein with which the management fees are effectively connected. In such case, the provisions of Paragraph 7 shall apply.

(6) Management fees shall be deemed to arise in a territory when the payer is that territory itself, a political subdivision, a local authority or a resident of that territory. Where, however, the person paying the management fees, whether he is resident of a territory or not, has in a territory a permanent establishment in connection with which the obligation to pay the management fees was incurred and the management fees are borne by that permanent establishment, then the management fees shall be deemed to arise in that territory.

(7) 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 management fees 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 Paragraph shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the law of each territory, due regard being had to the other provisions of this Arrangement.

Capital gains

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

(2) 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.

(3) Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the territory in which the place of effective management of the enterprise is situated.

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

(5) The provisions of sub-paragraph (4) of this Paragraph shall not affect the right of a territory to levy according to its own laws a tax on gains from the alienation of any property derived by a person who is a resident of the other territory and has been a resident of the first-mentioned territory at any time during the five years immediately preceding the alienation of the property.

Independent personal services

16.—(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 unless he has a fixed base regularly available to him in the other territory for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other territory but only so much of it as is attributable to that fixed base.

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

Dependent personal services

17.—(1) Subject to the provisions of Paragraphs 18, 20, 21 and 22, 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 sub-paragraph (1) of this Paragraph, 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 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 Paragraph, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a territory may be taxed in

the territory in which the place of effective management of the enterprise is situated.

Directors' fees

18. 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.

Artistes and athletes

19.—(1) Notwithstanding the provisions of Paragraphs 16 and 17, 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 an athlete, 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 an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Paragraphs 7, 16 and 17, be taxed in the territory in which the activities of the entertainer or athlete are exercised.

Pensions

20.—(1) Subject to the provisions of sub-paragraphs (1) and (2) of Paragraph 21, pensions and other similar remuneration paid in consideration of past employment to a resident of a territory and any annuity paid to such a resident shall be taxable only in that territory.

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

Government service

21.—(1) (a) Remuneration, other than a pension, paid by a territory or a political subdivision or a local authority thereof or by an agency of that territory, subdivision or authority to an individual in respect of services rendered to that territory, subdivision, authority or agency shall be taxable only in that territory.

(b) However, such 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 did not become so resident solely for the purpose of rendering the services.

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

(3) The provisions of Paragraphs 17, 18 and 20 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a territory or a political subdivision or a local authority thereof or by an agency of that territory, subdivision or authority.

Students

22. Payments which a student or business apprentice who is or was immediately before visiting a territory a resident of the other territory and who is present in the first-mentioned territory solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned territory, provided that such payments arise from sources outside that territory.

Teachers

23. A professor or teacher who visits a territory for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that territory and who is, or was immediately before that visit, a resident of the other territory shall be exempt from tax in the first-mentioned territory on any remuneration for such teaching in respect of which he is subject to tax in the other territory.

Income not expressly mentioned

24. Items of income of a resident of a territory, wherever arising, other than income paid out of trusts, which are not dealt with in the foregoing Paragraphs of this Arrangement shall be taxable only in that territory.

Limitation of relief

25. Where under any provision of this Arrangement income is relieved from tax in a territory and under the laws in force in the other territory it is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the relief to be allowed under this Arrangement shall apply only to the amounts so remitted or received.

Elimination of double taxation

26.—(1) (a) 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 and subject to the provisions of paragraph (b) of this sub-paragraph, Falkland Islands tax payable under the laws of the Falkland Islands and in accordance with this Arrangement, whether directly or by deduction, on profits, income or chargeable gains from sources within the Falkland Islands 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 Falkland Islands tax is computed.

- (b) Where such income is a dividend paid by a company which is a resident of the Falkland Islands the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits or income out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable. For the purposes of this sub-paragraph, where the recipient of the dividend is entitled to a tax credit in respect of a dividend paid by a company resident in the Falkland Islands, then any tax not exceeding the amount of that tax credit chargeable in the Falkland Islands on the aggregate of the amount or value of that dividend and the amount or value of that tax credit shall not be regarded as a tax which is additional to tax payable by the company on the profits or income out of which the dividend is paid.
- (c) Where the dividend is paid 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 Falkland Islands tax for which credit may be allowed under the provisions of paragraph (b) of this sub-paragraph) the Falkland Islands tax payable by the company on the profits or income out of which the dividend is paid.
- (2) For the purposes of sub-paragraph (1) of this Paragraph, where a person is declared a pioneer enterprise under Section 8A of the Falkland Islands Income Tax Ordinance, the term "Falkland Islands tax payable" shall, subject to the mutual agreement of the competent authorities in each such case, be deemed to include the whole or part of any amount which would have been payable as Falkland Islands tax for any year but for an exemption of tax granted for that year or any part thereof under the Fifth Schedule to that Ordinance.
- (3) Subject to the provisions of the law of the Falkland Islands regarding the allowance as a credit against Falkland Islands tax of tax payable in a territory outside the Falkland Islands (which shall not affect the general principle hereof):
- (a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom (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 Falkland Islands tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed; and
- (b) in the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of the Falkland Islands 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 United Kingdom tax for which credit may be allowed under the provisions of paragraph (a) of this sub-paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.
- (4) For the purposes of sub-paragraphs (1) and (3) of this Paragraph profits, income and capital gains owned by a resident of a territory which may be taxed

in the other territory in accordance with this Arrangement shall be deemed to arise from sources in that other territory.

(5) Where profits on which an enterprise of a territory has been charged to tax in that territory are also included in the profits of an enterprise of the other territory and the profits so included are profits which would have accrued to that enterprise of the other territory if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount of such profits included in the profits of both enterprises shall be treated for the purposes of this Paragraph as income from a source in the other territory of the enterprise of the first-mentioned territory and relief shall be given accordingly under the provisions of sub-paragraph (1) or sub-paragraph (3) of this Paragraph.

Non-discrimination

27.—(1) A resident 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 any person not resident in that other territory in the same circumstances is or may be subjected.

(2) 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.

(3) Except where the provisions of sub-paragraph (1) of Paragraph 9, sub-paragraph (8) of Paragraph 11, sub-paragraph (5) of Paragraph 12 or sub-paragraph (7) of Paragraph 14 apply, interest, royalties, management fees or 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.

(4) 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 that first-mentioned territory are or may be subjected.

(5) Nothing contained in this Paragraph 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.

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

Mutual agreement procedure

28.—(1) Where a resident of a territory considers that the actions of one or both of the territories result or will result for him in taxation not in accordance

with this Arrangement, 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.

(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 not in accordance with this Arrangement.

(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 Arrangement.

(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 sub-paragraphs.

Exchange of information

29. The competent authorities of the territories shall exchange such information (being information which is at their disposal under the respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Arrangement 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 Arrangement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons (including a court or administrative body) concerned with the assessment, collection, enforcement or prosecution in respect of taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process or information, the disclosure of which would be contrary to public policy.

Diplomatic agents and consular officials

30. Nothing in this Arrangement shall affect the fiscal privileges of members of diplomatic or consular missions under the general rules of international law or under the provisions of special agreements.

Entry into force

31.—(1) Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of the Arrangement. The Arrangement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in the United Kingdom:

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1982;
- (ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1982; and

(b) in the Falkland Islands:

in respect of income tax, including the tax on royalties and management fees, and the interest withholding tax, for any year of assessment beginning on or after 1 January 1982.

(2) Subject to the provisions of sub-paragraph (3) of this Paragraph, the Arrangement made in 1949^(a) between His Majesty's Government and the Government of the Falkland Islands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, as modified by the Arrangement made in 1968^(b) and the Supplementary Arrangement made in 1974^(c), shall terminate and cease to have effect in respect of taxes to which this Arrangement in accordance with the provisions of sub-paragraph (1) of this Paragraph applies.

(3) Where any provision of the Arrangement referred to in sub-paragraph (2) of this Paragraph would have afforded any greater relief from tax than is afforded by this Arrangement any such provision as aforesaid shall continue to have effect for any year of assessment or financial year beginning before the entry into force of this Arrangement.

Termination

32. This Arrangement shall remain in force until terminated by the Government of one of the territories. Either Government may terminate the Arrangement by giving notice of termination to the other Government at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Arrangement. In such event, the Arrangement shall cease to have effect;

(a) in the United Kingdom:

- (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; and

(b) in the Falkland Islands:

in respect of income tax, including the tax on royalties and management fees, and the interest withholding tax, for any year of assessment beginning on or after 1 January in the calendar year next following that in which the notice is given.

(a) S.I. 1949/360.
(b) S.I. 1968/575.
(c) S.I. 1974/2149.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Arrangement with the Falkland Islands scheduled to this Order replaces the 1949 Arrangement modified by the 1968 Protocol and the 1974 Supplementary Protocol. It provides that certain trading profits not arising through a permanent establishment are to be taxed only in the country of the taxpayer's residence. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated (Paragraphs 5 and 7). Shipping and air transport profits are to be taxed only in the country in which the place of effective management of the enterprise is situated (Paragraph 8).

Income from immovable property (Paragraph 6) and capital gains (Paragraph 15) arising from the disposal of such property or of shares in a company whose assets consist mainly of such property may be taxed in the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence, unless they arise from the disposal of assets of a permanent establishment or a fixed base which the taxpayer has in the other country.

Dividends paid by a Falkland Islands company to a resident of the United Kingdom may be taxed in the Falkland Islands, but the amount of any tax so charged shall not exceed the amount of any Falkland Islands tax credit to which the recipient is entitled.

Where a United Kingdom company pays a dividend to a resident of the Falkland Islands, other than to a company which controls directly or indirectly at least 10 per cent 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 would be entitled less tax at a rate not exceeding 15 per cent of the aggregate of the dividend and the tax credit (Paragraph 10).

The rates of tax to be imposed by the country of source on interest (Paragraph 11) and management fees (Paragraph 14) paid to a resident of the country are, in general, not to exceed 10 per cent and 15 per cent respectively. The country of source will exempt from tax interest payable to the Government (or a government agency) of the other country. Interest arising in the Falkland Islands on loans guaranteed by the United Kingdom Export Credits Guarantee Department will be exempt from tax in the Falkland Islands.

Royalties, other than mineral royalties, are, in general, to be exempt from tax in the country of source when paid to a resident of the other country (Paragraphs 12 and 13).

The earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence (Paragraphs 16 and 17). Public service salaries and pensions are normally to be taxed by the paying country only (Paragraph 21). Other pensions are to be taxed only in the country of the taxpayer's residence (Paragraph 20). Income derived from the activities of public entertainers may be taxed in the country in which those activities are exercised (Paragraph 19). Some payments made to visiting students and business apprentices are to be exempt from tax in the country visited (Paragraph 22).

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 the Falkland Islands is to include credit for tax spared under certain provisions of Falkland Islands law (Paragraph 26).

There are provisions safeguarding residents and enterprises of one country against discriminatory taxation in the other country (Paragraph 27) and for consultation and the exchange of information between the taxation authorities of the two countries (Paragraphs 28 and 29).

The Arrangement will enter into force when the legislative procedures in both countries have completed and will have effect in the United Kingdom from April 1982 (Paragraph 31).

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