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STATUTORY INSTRUMENTS

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**1991 No. 2877**

**INCOME TAX**

**The Double Taxation Relief (Taxes  
on Income) (Denmark) Order 1991**

*Made - - - - 19th December 1991*

At the Court at Buckingham Palace, the 19th day of December 1991

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) (Denmark) Order 1991.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1980(2), have been made with the Government of the Kingdom of Denmark 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 Denmark; and

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

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(1) 1988 c. 1; section 788 is extended by section 10 of the Capital Gains Tax Act 1979 (c. 14).  
(2) S.I.1980/1960.

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*G. I. de Deney*  
Clerk of the Privy Council

## SCHEDULE

### PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED IN COPENHAGEN ON 11th NOVEMBER 1980

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

Desiring to conclude a Protocol to amend the Convention between Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, signed in Copenhagen on 11th November 1980 (hereinafter referred to as “the Convention”);

Have agreed as follows:

## ARTICLE I

(1) Sub-paragraph (c)(i) of paragraph (1) of Article 3 of the Convention shall be deleted and replaced by the following:

“(i) in relation to the United Kingdom, any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;”

(2) Sub-paragraph (f) of paragraph (1) of Article 3 of the Convention shall be deleted and replaced by the following:

“(f) the term “person” comprises an individual, a company and any other body of persons, but does not include partnerships;”

## ARTICLE II

The following new provisions shall be inserted immediately after paragraph (3) of Article 5 of the Convention:

“(3A) Notwithstanding the provisions of paragraph (3) of this Article, a project for the construction or installation of a pipeline for the transportation of oil or gas, or a building site associated with such construction or installation, shall constitute a permanent establishment whether or not it lasts for more than 12 months.

(3B) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State if it carries on the activity of making an oil or gas well in the other Contracting State.”

## ARTICLE III

The following new provisions shall be inserted immediately after paragraph (5) of Article 11 of the Convention:

“(6) The provisions of paragraph (1) of this Article shall not apply where the beneficial owner of the interest is a company other than a quoted company, unless the company shows that it is not controlled by a person, or two or more associated or connected persons together, who or any of

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whom would not have been entitled to relief under paragraph (1) of this Article if he had been the beneficial owner of the interest.

(7) For the purposes of paragraph (6) of this Article:

- (a) a quoted company is any company the shares in which are officially quoted on a stock exchange in the Contracting State of which it is a resident, provided that the conditions for admission to such quotation, and in particular those governing the minimum value of the shares to be admitted, the transferability and the dispersion of the shares, are in conformity with the conditions set out in Schedule A to the directive of the Council of the European Communities dated 5th March 1979 No. [79/279/EEC](#);
- (b) subject to paragraph (8) of this Article, a person or two or more associated or connected persons together shall be treated as having control of a company if, under the laws of the Contracting State in which the interest arises relating to the taxes covered by this Convention, they could be treated as having control of it for any purpose and persons shall be treated as associated or connected if, under those laws, they could be so treated for any purpose.

(8) Where an individual is treated by paragraph (7)(b) of this Article as having control of a company by reason only of the fact that he holds ordinary shares in the company carrying full voting and dividend rights, and that individual holds not more than 20 per cent of the total number of such shares in the company, the shares held by him shall be left out of account in determining whether the company is controlled by a person or two or more associated or connected persons together, provided that not more than 30 per cent of the total of such shares in the company may be left out of account in this manner.”

## ARTICLE IV

The following new provisions shall be inserted immediately after paragraph (4) of Article 12 of the Convention:

“(5) The provisions of paragraph (1) of this Article shall not apply where the beneficial owner of the royalties is a company other than a quoted company, unless the company shows that it is not controlled by a person, or two or more associated or connected persons together, who or any of whom would not have been entitled to relief under paragraph (1) of this Article if he had been the beneficial owner of the royalties.

(6) For the purposes of paragraph (5) of this Article:

- (a) a quoted company is any company the shares in which are officially quoted on a stock exchange in the Contracting State of which it is a resident, provided that the conditions for admission to such quotation, and in particular those governing the minimum value of the shares to be admitted, the transferability and the dispersion of the shares, are in conformity with the conditions set out in Schedule A to the directive of the Council of the European Communities dated 5th March 1979 No. [79/279/EEC](#);
- (b) subject to paragraph (7) of this Article, a person or two or more associated or connected persons together shall be treated as having control of a company if, under the laws of the Contracting State in which the royalties arise relating to the taxes covered by this Convention, they could be treated as having control of it for any purpose and persons shall be treated as associated or connected if, under those laws, they could be so treated for any purpose.

(7) Where an individual is treated by paragraph (6)(b) of this Article as having control of a company by reason only of the fact that he holds ordinary shares in the company carrying full voting and dividend rights, and that individual holds not more than 20 per cent of the total number of such shares in the company, the shares held by him shall be left out of account in determining whether

the company is controlled by a person or two or more associated or connected persons together, provided that not more than 30 per cent of the total of such shares in the company may be left out of account in this manner.”

## ARTICLE V

Paragraph (4) of Article 13 shall be deleted and replaced by the following:

- “(4) Gains derived by a resident of a Contracting State from the alienation of–
- (a) exploration or exploitation rights, or
  - (b) property situated in the other Contracting State and used in connection with offshore activities, as defined in paragraph (1) of Article 28A of this Convention, carried on in that other State, or
  - (c) shares deriving their value or the greater part of their value directly or indirectly from such rights or such property or from such rights and such property taken together,

may be taxed in that other State.

In this paragraph “exploration or exploitation rights” means rights to assets to be produced by the exploration or exploitation of the sea-bed and subsoil and their natural resources in the other Contracting State, including rights to interests in or to the benefit of such assets.

(5) A gain on property referred to in sub-paragraph (b) of paragraph (4) of this Article which is deemed to be derived by a resident of a Contracting State when an activity in which the property is used ceases to be subject to tax in the other State shall not be taxed by that other State.

(6) 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 Contracting State of which the alienator is a resident.”

## ARTICLE VI

Paragraph (1) of Article 14 of the Convention shall be deleted and replaced by the following:

“(1) Income derived by an individual who is a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State. However, such income may also be taxed in the other Contracting State if:

- (a) the individual is present in the other State for a period or periods exceeding in the aggregate 183 days in any period of 12 months; or
- (b) the individual has a fixed base regularly available to him in that other State for the purpose of performing his activities;

but only so much thereof that is attributable to services performed in that other State.”

## ARTICLE VII

Paragraphs (1), (2) and (3) of Article 15 of the Convention shall be deleted and replaced by the following:

“(1) Subject to the provisions of Article 16, 18, 19 and 20 of this Convention, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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(2) Notwithstanding the provisions of paragraph (1) of this Article and subject to paragraph (3) of this Article, remuneration derived by a resident of Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of 12 months, and
- (b) the remuneration is paid by, or on behalf of, an employer who is a resident of the State of which the recipient is a resident, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Paragraph (2) of this Article shall not apply to remuneration derived by a resident of a Contracting State, in this paragraph called “the employee”, and paid by or on behalf of an employer who is a resident of that State in respect of any employment exercised in the other Contracting State where:

- (a) the employee renders services in the course of that employment to a person other than the employer who, directly or indirectly, supervises, directs or controls the manner in which those services are performed; and
- (b) the employer is not responsible for carrying out the purpose for which the services are performed.

(4) 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 Contracting State in which the place of effective management of the enterprise is situated.

Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Denmark.”

## ARTICLE VIII

The following new provision shall be inserted immediately after sub-paragraph (b) of paragraph 1 of Article 19 of the Convention:

- “(c) Notwithstanding the provisions of sub-paragraph (b)(ii) of this paragraph, the provisions of sub-paragraph (a) shall apply to remuneration paid to:
  - (i) employees at the British Embassy or at the British Council in Copenhagen who are not nationals of Denmark, and
  - (ii) employees at the Danish Embassy in London who are not nationals of the United Kingdom.”

## ARTICLE IX

Paragraph (1) of Article 21 of the Convention shall be deleted and replaced by the following:

“(1) Items of income, wherever arising, other than income paid out of trusts or the estates of deceased persons in the course of administration, which are beneficially owned by a resident of a Contracting State and not expressly mentioned in the foregoing Articles of this Convention, shall be taxable only in that State.”

## ARTICLE X

The following new Article shall be inserted immediately after Article 28:

### “ARTICLE 28A

#### Miscellaneous rules applicable to certain offshore activities

(1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on offshore in connection with the exploration for or exploitation of oil or gas in the sea-bed and subsoil (in this Article called “offshore activities”) situated in a Contracting State.

(2) An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.

(3) A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in that other Contracting State.

(4) Notwithstanding the provisions of paragraph (2) of this Article, profits derived by an enterprise of a Contracting State from the operation, in connection with offshore activities, of ships or aircraft which are in their existing state designed primarily for the purpose of transporting supplies or personnel, or of tugboats or anchor handling vessels, shall be taxable only in the State in which the place of effective management of the enterprise is situated. However, the provisions of this paragraph shall not apply to profits derived during any period in which such a ship or aircraft is contracted to be used mainly for purposes other than to transport supplies or personnel to or between places where offshore activities are being carried on.

- (a) (5) Subject to sub-paragraphs (b) and (c) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities in the other Contracting State shall, to the extent that the duties are performed offshore in that other Contracting State, be taxable only in that other Contracting State.
- (b) Subject to sub-paragraph (c) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft, to the profits from the operation of which paragraph (4) of this Article applies, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
- (c) Unless documentary evidence is produced to the competent authority of the other Contracting State that arrangements have been made for the payment of tax thereon in the Contracting State which has the sole right to tax the remuneration in accordance with sub-paragraph (a) or (b) of this paragraph, such remuneration may also be taxed in that other Contracting State.”

## ARTICLE XI

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall, subject to the provisions of paragraphs (2) and (3) of this Article, thereupon have effect.

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(2) The provisions of sub-paragraph (c) of paragraph (1) of Article 19 of the Convention (as added by Article VIII of the Protocol) shall have effect in respect of remuneration received for duties performed in employment on or after 1st January 1980.

(3) Except as provided for in paragraph (2) of this Article the provisions of this Protocol shall have effect:

- (a) in the United Kingdom in respect of income tax for any year of assessment beginning on or after 6th April following the calendar year in which the Protocol enters into force,
- (b) in Denmark in respect of taxes for the income year which coincides with or replaces the calendar year immediately following that in which the Protocol enters into force and subsequent income years<sup>(3)</sup>.

This Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at London this 1st day of July 1991 in the English and Danish languages, both texts being equally authoritative.

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

*Francis Maude*

For the Government of the Kingdom of Denmark

*Rudolph A. Thorning-Petersen*

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## EXPLANATORY NOTE

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

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1980.

The Protocol introduces special rules in respect of income, profits and gains from oil and gas related activities and also amends the Convention in certain other respects.

Amendments are made to the permanent establishment rules to cover the construction and installation of pipeline and the making of oil wells (Article II), and to the capital gains rules to cover the disposal of offshore mineral exploration or exploitation rights and assets (Article V).

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(3) This article is printed as amended by an Exchange of Notes in Copenhagen on 6th November 1991 between the Government of the United Kingdom and the Government of the Kingdom of Denmark.



A new Article is introduced to cover the profits and earnings from activities connected with offshore oil and gas exploration and exploitation. Trading profits from such activities are deemed to arise through a permanent establishment or fixed base and may therefore be taxed in the country in which the activities are carried on. The earnings of employees are, in general, to be taxed only in the country in which the employment is exercised. Further special rules, however, apply to profits from the transportation of supplies and personnel, and to the earnings of employees engaged in such activities (Article X).

Amendments are also made to the Articles of the Convention dealing with Interest and Royalties. These new rules provide that tax will not be repaid where the beneficial owner of the interest is a company, other than a company quoted on a stock exchange in the country of which it is a resident, unless the company can show (subject to a de minimis limit) that it is not controlled by a person or a group of persons who would not have been entitled to repayment of the tax had the interest or royalty payment been received direct.

The Protocol is generally to take effect in the United Kingdom on or after 6th April in the calendar year following that in which it enters into force. But new provisions dealing with employees of the British Embassy or at the British Council in Copenhagen (Article VIII) will take effect for duties performed in employment on or after 1st January 1980. The date of entry into force will in due course be published in the London, Edinburgh and Belfast Gazettes