
STATUTORY INSTRUMENTS

1991 No. 2882

INCOME TAX

**The Double Taxation Relief (Taxes on
Income) (Papua New Guinea) 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) (Papua New Guinea) Order 1991.

2. It is hereby declared—

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Independent State of Papua New Guinea with a view to affording relief from double taxation in relation to income tax or corporation tax and taxes of a similar character imposed by the laws of Papua New Guinea;
- (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 Papua New Guinea concerning taxes covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
- (c) that it is expedient that those arrangements should have effect.

(1) 1988 c. 1; section 788 is extended by section 10 of the Capital Gains Tax Act 1979 (c. 14).

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G.I. de Deney
Clerk of the Privy Council

SCHEDULE

CONVENTION

BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE INDEPENDENT STATE OF PAPUA NEW GUINEA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Independent State of Papua New Guinea;

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

Have agreed as follows:

ARTICLE I

Personal scope

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

ARTICLE 2

Taxes covered

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

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

(i) the income tax; and

(ii) the corporation tax,

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

(b) in Papua New Guinea:

the income tax imposed under the law of Papua New Guinea, including:

(i) the salary or wages tax;

(ii) the additional profits tax upon taxable additional profits from mining operations;

(iii) the additional profits tax upon taxable additional profits from petroleum operations;

(iv) the specific gains tax upon taxable specific gains; and

(v) the dividend withholding tax upon taxable dividend income;

(hereinafter referred to as “Papua New Guinea tax”).

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the taxes of that Contracting State referred to in paragraph (1) of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

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ARTICLE 3

General definitions

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

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
- (b) the term “Papua New Guinea” means the Independent State of Papua New Guinea and, when used in a geographical sense, includes any area adjacent to the territorial limits of Papua New Guinea in respect of which there is for the time being in force, in accordance with or consistent with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea-bed and subsoil;
- (c) the term “national” means:
 - (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;
 - (ii) in relation to Papua New Guinea, any Papua New Guinea citizen and includes any legal person, partnership, association or other entity deriving its status as such from the law in force in Papua New Guinea;
- (d) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Papua New Guinea as the context requires;
- (e) the term “person” comprises an individual, a company and any other body of persons, but does not include partnerships;
- (f) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
- (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and, in the case of Papua New Guinea, the Chief Collector of Taxes or an authorised representative of the Chief Collector of Taxes.

(2) In this Convention, the terms “United Kingdom tax” and “Papua New Guinea tax” do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes which are the subject of this Convention.

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

ARTICLE 4

Fiscal domicile

(1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the law of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature.

(2) A person is not a resident of a Contracting State for the purposes of this Convention if he is liable to tax in that State in respect only of income from sources in that State.

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

- (a) he shall be deemed to be a resident of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
- (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both States or is a national of neither of them, the competent authorities of the Contracting States 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 Contracting States, then its status shall be determined in accordance with the following rules:

- (a) that person shall be deemed to be a resident of the State in which its place of effective management is located;
- (b) if it is not possible to determine that person’s status under paragraph (4)(a) of this Article the competent authorities of the Contracting States shall endeavour to do so by mutual agreement.

(5) Notwithstanding paragraph (4) of this Article, where a trust estate within the meaning of the laws of Papua New Guinea is at the same time a settlement under the laws of the United Kingdom, and:

- (a) the trust estate is treated by the laws of Papua New Guinea as a resident trust estate; and
- (b) the trustees of the settlement are, according to the laws of the United Kingdom, all resident or treated by those laws as resident in the United Kingdom;

for the purposes of this Convention that trust estate shall not be regarded as a resident of Papua New Guinea and those trustees shall not be regarded as a body of persons which is a resident of the United Kingdom.

ARTICLE 5

Permanent establishment

(1) For the purposes of this Convention, 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;

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- (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;
- (g) an installation or structure used for the exploration or exploitation of natural resources; and
- (h) an agricultural, pastoral or forestry property.

(3) A building site or construction or installation or assembly project constitutes a permanent establishment only if it lasts more than 183 days in any 365 day period.

(4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if services are furnished in that State, including consultancy services through employees or other personnel engaged by the enterprise for such purposes (other than agents of an independent status within the meaning of paragraph (7) of this Article) and those activities continue for the same or a connected project within that State for a period or periods amounting in aggregate to more than 183 days in any 365 day 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 or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or 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) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (7) applies—shall be deemed to be a permanent establishment of that enterprise in the first-mentioned State if:

- (a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person’s activities are limited to the mere purchase of goods or merchandise for the enterprise;
- (b) the person has no such authority, but habitually maintains in that State a stock of goods or merchandise from which the person regularly delivers in that State goods or merchandise on behalf of the enterprise; or
- (c) in so acting, the person manufactures or processes in that State for the enterprise goods or merchandise belonging to the enterprise.

(7) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State 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 Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from real property

(1) Income derived by a resident of a Contracting State from real property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) The term “real property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property and rights to variable or fixed payments as consideration for the working of, or the right to work, or the right to explore for, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as real 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 real property.

(4) Any interest or right referred to in paragraph (2) shall be regarded as situated where the land, mineral deposits, sources and other natural resources, as the case may be, are situated or where the exploration may take place.

(5) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from real property of an enterprise and to income from real property used for the performance of independent personal services.

ARTICLE 7

Business profits

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

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and independent enterprise.

(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 State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

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(6) Nothing in this Article shall affect the operation of:

- (a) any law of Papua New Guinea in so far as it relates to the tax chargeable on that part, deemed to be taxable income, of an insurance premium paid to an enterprise of the United Kingdom, provided that the tax rate applied to such income shall not exceed the rate which would be imposed on the income of a corporation resident in Papua New Guinea and carrying on an insurance business; or
- (b) the law of Papua New Guinea relating to the deduction of tax from receipts derived by a foreign contractor from a prescribed contract within the meaning of that law, where, in accordance with this Convention, that contractor is a resident of the United Kingdom with a permanent establishment in Papua New Guinea.

Provided that if the relevant law in force in either Contracting State at the date of signature of this Convention is varied (other than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

ARTICLE 8

Shipping

(1) Profits derived by an enterprise of a Contracting State from the operation of ships for the carriage of passengers, livestock, mail, goods or merchandise shall be taxable only in that State except where the operation is carried on wholly or in part in the other Contracting State. Where the operation is so carried on such profits derived from the carriage of passengers, livestock, mail, goods or merchandise shipped in the other Contracting State for delivery in that State may be taxed in that State.

(2) Profits derived by an enterprise of a Contracting State from containers in the course of a business principally consisting of the operation of ships for the carriage of passengers, livestock, mail, goods or merchandise shall be taxable only in that State except in a case where the containers are shipped in the other Contracting State for delivery in that State. In that case the profits of the enterprise from the containers for the period for which the containers are so shipped may be taxed in that State.

(3) For the purpose of paragraph (2) of this Article profits are derived from containers if the profits are derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport or storage of livestock, mail, goods or merchandise.

(4) Profits derived by an enterprise of a Contracting State from a contract which provides for the rental of a ship on a *bareboat basis in the course of a business principally consisting of the operation of ships for the carriage of passengers, livestock, mail, goods or merchandise shall be taxable only in that State except where the profits are derived from a contract under which the ship is used wholly or mainly in the other Contracting State. If the ship is so used the profits from that contract may be taxed in that State.

(5) Where an enterprise of a Contracting State derives profits from participation in a pool, a joint venture or an international operating agency, the provisions of this Article shall apply to those profits to the extent that they would have applied had the activities carried on jointly been undertaken exclusively by the enterprise.

ARTICLE 9

Air transport

(1) Profits from the operation of aircraft in international traffic derived by an enterprise of a Contracting State shall be taxable only in that State.

(2) Where profits within paragraph (1) of this Article are derived by an enterprise of a Contracting State from participation in a pool, a joint venture or an international operating agency, the profits attributable to that enterprise shall be taxable only in that State.

(3) For the purpose of this Article the operation of aircraft in international traffic means any transport by an aircraft operated by an enterprise of a Contracting State except where the aircraft is operated solely between places in the other Contracting State.

ARTICLE 10

Associated enterprises

(1) Where:

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

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

(2) Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 11

Dividends

(1) Dividends derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but where the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed 17 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(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 assimilated

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to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article 12 of this Convention and distributions from unit trusts created under the law of Papua New Guinea) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company or, in the case of Papua New Guinea, as a taxable gain.

(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 Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State 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 15 of this Convention, as the case may be, shall apply.

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

ARTICLE 12

Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State; but where the beneficial owner of such interest is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

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

(4) Notwithstanding the provisions of Article 7 of this Convention and of paragraph (2) of this Article, interest arising in Papua New Guinea which is paid to and beneficially owned by a resident of the United Kingdom shall be exempt from Papua New Guinea 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 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. The term "interest" shall not include any item which is treated as a distribution under the provisions of Article 11 of this Convention.

(6) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of the Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim

in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base.

In such case, the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

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

(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 Article 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 Contracting State, due regard being had to the other provisions of this Convention.

(9) Any provision in the law of either Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution or dividend by the company paying such interest. The preceding sentence shall not apply to interest paid to a company which is a resident of one of the Contracting States if more than 50 per cent of the voting power in the company receiving the interest is controlled, directly or indirectly, by a person or persons who are residents of the other Contracting State.

(10) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purposes of taking advantage of this Article.

ARTICLE 13

Royalties

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

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State; but where the beneficial owner of such royalties is a resident of the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(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 the use of, or the right to use, industrial, commercial or scientific equipment or for any covenant or undertaking restricting the grant to any person of any such rights.

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

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In such case, the provisions of Article 7 or Article 15 of this Convention, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation 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 Contracting State 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 Contracting State, due regard being had to the other provisions of this Convention.

(7) In this Article, references to royalties paid or to the payment of royalties includes royalties credited or the credit of royalties.

ARTICLE 14

Technical fees

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

(2) However, such technical fees may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the technical fees the tax so charged shall not exceed 10 per cent of the gross amount of the technical fees.

(3) The term “technical fees” as used in this Article means payments of any kind to any person, other than an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

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

(5) If a resident of one of the Contracting States, who receives and beneficially owns technical fees which arise in the other Contracting State, so elects for any year of assessment, financial year or year of income, the tax chargeable in respect of those technical fees in the Contracting State in which they arise shall be calculated as if he had a permanent establishment or a fixed base in the last-mentioned Contracting State and as if those technical fees were taxable in accordance with Article 7 or Article 15 of this Convention, as the case may be, as profits attributable to that permanent establishment or fixed base.

(6) Technical fees shall be deemed to arise in a Contracting State where the payer is that State itself, a political sub-division, a local authority or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or

fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

(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 technical 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 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 Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 15

Independent personal services

(1) Income derived by 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 unless:

- (a) he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base; or
- (b) his presence in that other Contracting State exceeds in aggregate 183 days in any 365 day period. In that case, so much of the income as is derived from his activities in that other Contracting State may be taxed in that State.

(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 16

Dependent personal services

(1) Subject to the provisions of Articles 17, 19, 20 and 21 of this Convention, salaries, wages, gratuities and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a 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 365 day period; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.
- (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft, other than a ship or aircraft operated solely between places in one Contracting State, may be taxed in the Contracting State of which the employer

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is a resident. Where the employment is exercised aboard a ship or aircraft operated solely between places in one Contracting State paragraphs (1) and (2) of this Article shall apply.

ARTICLE 17

Directors' fees

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

ARTICLE 18

Artistes and athletes

(1) Notwithstanding the provisions of Article 15 and Article 16 of this Convention, income derived by a resident of a Contracting State 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 Contracting State, may be taxed in that other State.

(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 Articles 7, 15 and 16 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

ARTICLE 19

Pensions and annuities

(1) Pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that Contracting State provided that such pension or annuity is subject to tax in that Contracting State.

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

ARTICLE 20

Government service

- (a) (1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered in the discharge of government functions to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.

(2) The provisions of Article 16 and Article 17 of this Convention shall apply to remuneration in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 21

Students

Payments which a student or business apprentice who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and who is present in the first-mentioned State 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 State, provided that such payments arise from sources outside that State.

ARTICLE 22

Income not expressly mentioned

(1) Items of income of a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Convention, other than income paid out of trusts or the estates of deceased persons in the course of administration, shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from real property as defined in paragraph (2) of Article 6 of this Convention, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State 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 15 of this Convention, as the case may be, shall apply.

ARTICLE 23

Elimination of double taxation

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

- (a) Papua New Guinea tax payable under the laws of Papua New Guinea and in accordance with this Convention, whether directly or by deduction, on profits or income from sources within Papua New Guinea (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Papua New Guinea tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Papua New Guinea 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 Papua New Guinea tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Papua New Guinea tax payable by the company in respect of the profits out of which such dividend is paid.

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(2) Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea (which shall not affect the general principle hereof), tax paid under the law of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income derived by a person who is a resident of Papua New Guinea for the purposes of the law of Papua New Guinea relating to Papua New Guinea tax from sources in the United Kingdom (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Papua New Guinea tax payable in respect of that income.

(3) For the purposes of paragraph (1) of this Article, the term "Papua New Guinea tax payable" shall be deemed to include any amount which would have been payable as Papua New Guinea tax for any year but for an exemption or reduction of tax granted for that year on any part thereof under any of the following provisions of Papua New Guinea law:

- (a) Sections 45L, 73(9), 97 or 97A of the Papua New Guinea Income Tax Act 1959 as amended, so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or
- (b) Sections 72A(3), 73(3) or 73(7) of the Papua New Guinea Income Tax Act 1959 as amended, so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character: and provided always that the competent authority of Papua New Guinea has certified that any such exemption or relief from Papua New Guinea tax given under these Sections has been granted in order to promote industrial, commercial, scientific, educational or other development in Papua New Guinea and the competent authority of the United Kingdom has accepted that such exemption or relief has been granted for such purpose; or
- (c) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than 10 years after the exemption from, or reduction of, Papua New Guinea tax was first granted in respect of that source.

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

ARTICLE 24

Limitation of relief

Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

ARTICLE 25

Non-discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities, provided that this paragraph shall not prevent that other Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the first-mentioned Contracting State further tax not exceeding 13 per cent of those profits.

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

(4) Except where the provisions of paragraph (1) of Article 10, paragraph (8) of Article 12, paragraph (6) of Article 13 or paragraph (7) of Article 14 of this Convention apply, interest, royalties, technical fees and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State 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 State.

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

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

ARTICLE 26

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident.

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

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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

ARTICLE 27

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall be disclosed only to persons (including a court or administrative body) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Convention. 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 as to impose on the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice prevailing in either Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of either Contracting State;
- (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 (ordre public).

ARTICLE 28

Diplomatic agents and consular officials

(1) Nothing in this Convention shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of paragraph (1) of Article 4 of this Convention, an individual who is a member of a diplomatic or permanent mission or consular post of a Contracting State or any third State which is situated in the other Contracting State or who is an official of an international organisation, and any members of the family of such an individual, shall not be deemed to be a resident of the other State if he is subject to tax on income or capital gains in that other State only if he derives income from sources therein.

ARTICLE 29

Entry in force

Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Convention. The Convention 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 for any year of assessment beginning on or after 6th April in the calendar year next following that in which the later of these notifications is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or later 1st April in the calendar year next following that in which the later of these notifications is given; and

- (b) in Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1st January in the calendar year next following that in which later of these notifications is given;
 - (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1st January in the calendar year next following that in which the later of these notifications is given.

ARTICLE 30

Termination

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

- (a) in the United Kingdom:
 - (i) in respect of income 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; and
- (b) in Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1st January in the calendar year next following that in which the notice is given;
 - (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1st January in the calendar year next following that in which the notice is given.

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

Done in duplicate at London this 17th day of September 1991.

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

For the Government of the Independent State of
Papua New Guinea:
W. Noel Levy

EXPLANATORY NOTE

(This note is not part of the Order)

The Convention with Papua New Guinea is set out in the Schedule to this Order.

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The Convention provides for business profits not arising through a permanent establishment 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 (Articles 5 and 7).

Shipping profits are generally to be taxed only by the residence state of the shipping enterprise (Article 8). Profits from international air transport are to be taxed only by the residence state of the enterprise (Article 9). The Convention includes rules for determining taxable profits when a company in one country is related to a company in the other (Article 10).

The rate of tax imposed in the country of source on dividends derived by a resident of the other country is normally not to exceed 17 per cent of the gross amount of the dividends (Article 11). The rate of tax imposed in the country of source on interest derived by a resident of the other country is not to exceed 10 per cent of the gross amount flowing to the other country. Certain categories of interest (e.g. interest paid to the Government of the other country) will be exempt from tax in the source country (Article 12). The rate of tax imposed in the source country on royalties is limited to 10 per cent where the beneficial owner is a resident of the other country (Article 13).

The rate of tax on technical fees arising in one country and paid to a resident of the other country is not to exceed 10 per cent of the gross amount, but if the recipient so chooses, the tax chargeable on the fees is to be calculated as if he had a permanent establishment in the source country, i.e. net of expenses (Article 14).

The earnings of temporary business visitors and some other individuals are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence (Articles 15 and 16). Fees received by a resident of one country in his capacity as a director of a company resident in the other country may be taxed in the latter country (Article 17). Income derived from the activities of artistes and athletes may be taxed in the country in which those activities are performed (Article 18). Government service salaries are normally to be taxed by the paying government only (Article 20). Certain payments made to visiting students or business apprentices are, subject to certain conditions, to be exempt from tax in the country visited (Article 21). Occupational pensions and annuities are to be taxed only in the country of the taxpayer's residence (Article 19).

Where income continues to be taxable in both countries credit will be given by the taxpayer's country of residence for tax imposed by the other country. The credit to be given in the United Kingdom for tax imposed in Papua New Guinea includes credit for tax spared under certain provisions of Papua New Guinea law. In the case of dividends, the United Kingdom will give credit for underlying tax paid in Papua New Guinea where the shareholder is a United Kingdom company which controls at least 10 per cent of the voting power in the dividend paying company (Article 23).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 25) and for consultations (Article 26) and exchange of information (Article 27) between the taxation authorities of the two countries.

The Convention will enter into force when the legislative procedures in both countries have been completed, and will have effect in the United Kingdom from 1st April (in respect of corporation tax) and 6th April (in respect of income tax) in the following calendar year (Article 29). The date of entry into force will in due course be published in the London, Edinburgh and Belfast Gazettes.