
STATUTORY INSTRUMENTS

1992 No. 3207

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Guyana) Order 1992

Made - - - - 17th December 1992

At the Court at Buckingham Palace, the 17th day of December 1992

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) (Guyana) Order 1992.
2. It is hereby declared—
 - (a) that the arrangements specified in the Convention set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule have been made with the Government of the Co-operative Republic of Guyana 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 Guyana;
 - (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 Guyana 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 277 of the Taxation of Chargeable Gains Act 1992(c. 12).

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N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

PART I

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE CO-OPERATIVE REPUBLIC OF GUYANA 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 Co-operative Republic of Guyana;

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains and the encouragement of international trade and investment;

Have agreed as follows:

Article 1

Personal scope

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

Article 2

Taxes covered

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

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

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax; (hereinafter referred to as "United Kingdom tax");

(b) in the Co-operative Republic of Guyana: The corporation tax, income tax and capital gains tax which are imposed by the Government of the Co-operative Republic of Guyana (hereinafter referred to as "Guyana tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, those referred to in the preceding paragraph.

(3) The Contracting States shall notify each other of any substantial changes in the laws relating to the taxes which are the subject of this Convention, within a reasonable period of time after such change.

Article 3

General definitions

(1) For the purposes of 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) (i) the term "Guyana" means the Co-operative Republic of Guyana; and

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- (ii) when used in a geographical sense, the term “Guyana” includes the territorial seas thereof including any area beyond such territorial seas which in accordance with international law and the laws of Guyana, is an area within which the rights of sovereignty with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (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 Guyana, the term “national” means:
 - (aa) any individual who is a citizen of Guyana;
 - (bb) any legal person, partnership, association or other entity deriving its status as such from the laws in force in Guyana;
 - (d) the terms “a Contracting State”, “the other Contracting State” and “one of the Contracting States” mean the United Kingdom or Guyana, as the context requires;
 - (e) the term “person” comprises an individual, a company and any other body of persons, but does not include a partnership;
 - (f) the term “company” means any body corporate or any entity which is treated as a 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 “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) 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 Guyana, the Minister of Finance or his authorised representative.
- (2) In the application of this Convention by a Contracting State any term not defined in this Convention shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Convention.

Article 4

Resident

- (1) For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws 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. The terms “resident of the United Kingdom” and “resident of Guyana” shall be construed accordingly.
- (2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has no permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
- (3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall for the purposes of this Convention be deemed to be a resident of the Contracting State in which its place of effective management is situated.

Article 5

Permanent establishment

- (1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business 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) a store or other sales outlet;
 - (d) an office;
 - (e) a warehouse in relation to a person providing storage facilities for others;
 - (f) a factory;
 - (g) a workshop;
 - (h) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
- (3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.
- (4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
- (5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article:

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- (a) where a person other than an agent of an independent status to whom paragraph (6) of this Article applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph;
- (b) where a person maintains in a Contracting State equipment or machinery for rental or other purposes within such State for a period, or periods, exceeding in the aggregate twelve months, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of that activity.

(6) 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.

(7) 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

Limitation of relief

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

Article 7

Income from immovable property

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

(2) The term “immovable 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 immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property and to profits from the alienation of such property.

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

Article 8

Business profits

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

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) 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 a reasonable allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the Contracting 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 of income or capital gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 9

Shipping and air transport

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

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

- (a) income from the rental on a bareboat basis of ships or aircraft where such rental is incidental to the operation of ships or aircraft in international traffic; and
- (b) profits from the use, maintenance or rental of containers (including trailers, barges and related equipment for the transport of containers) used for the transport of goods or merchandise where such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to profits referred to in those paragraphs derived by a resident of a Contracting State from its participation in a pool, a joint business, or an international operating agency.

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,

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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, but for those conditions, would have accrued to one of the enterprises, may be included by a Contracting State 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 dealing at arm's length 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 State shall if necessary consult each other.

Article 11

Dividends

(1) Dividends paid by a company which is a resident of a Contracting State to 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 if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

(3) The terms "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 to income from shares by the taxation laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraph (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 8 or Article 16 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 tax, 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.

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(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

(3) The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from government securities and income from bonds or debentures. The term “interest” shall not include any item which is treated as a distribution under the provisions of Article 11 of this Convention.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 8 or Article 16 of this Convention, as the case may be, shall apply.

(5) 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 such 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.

(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 interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount of interest. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) Any provision in the laws 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 in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons who are residents of the other Contracting State.

(8) The relief from tax provided for in paragraph (2) of this Article shall not apply if the beneficial owner of the interest:

- (a) is exempt from tax on such income in the Contracting State of which he is a resident; and
- (b) sells or makes a contract to sell the holding from which such interest is derived within three months of the date such beneficial owner acquired such holding.

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

(10) 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.

(11) Notwithstanding the provisions of Article 8 of this Convention and of paragraph (2) of this Article, interest arising in Guyana which is paid to and beneficially owned by a resident of the United Kingdom shall be exempt from tax in Guyana if it is paid in respect of a loan made, guaranteed

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or insured, or any other debt-claim or credit guaranteed or insured by the United Kingdom Export Credits Guarantee Department.

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 if the recipient is the beneficial owner of the royalties 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 (but not including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process.

(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, 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. In such case the provisions of Article 8 or Article 16 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 subdivision, 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) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.

Article 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:

- (a) 10 per cent of the gross amount of those fees, or
- (b) in the case of the fees arising in Guyana, where the Minister of Finance applies section 39(10) of the Income Tax Act, Chapter 81:01, (or any re-enactment thereof without substantial modification), such smaller percentage of the gross amount of those fees as may be agreed between the recipient and the Government of Guyana.

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(3) The term “technical fees” as used in this Article means payments of any kind to any person, other than to 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 8 or Article 16 of this Convention, as the case may be, shall apply.

(5) Technical fees 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 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.

(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 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.

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

Article 15

Capital Gains

(1) Subject to the provisions of paragraph (2) of this Article, each Contracting State may tax capital gains in accordance with the provisions of its domestic law.

(2) Gains from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in the Contracting State in which the person operating the ship or aircraft is a resident.

Article 16

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 he has or had a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has or had 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.

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

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Article 17

Dependent personal services

(1) Subject to the provisions of Articles 18, 20 and 21 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.

(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 period of 12 months, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) such remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other State.

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

Article 18

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 19

Artistes and athletes

(1) Notwithstanding the provisions of Article 16 and Article 17 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 8, 16 and 17 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs (1) and (2) shall not apply if the visit of the entertainers or athletes to a Contracting State is supported wholly or substantially from public funds of the other Contracting State, a political subdivision or a local authority thereof.

Article 20

Pensions

(1) Subject to the provisions of paragraph (2) of Article 21 of this Convention, 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 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.

(3) Alimony and other similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is subject to tax therein in respect thereof, shall be taxable only in that other State.

Article 21

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 to that State or subdivision or authority shall be taxable only in that State.
- (b) Notwithstanding the provisions of sub-paragraph (1)(a) of this Article, 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.
- (a) (2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) Notwithstanding the provisions of sub-paragraph (2)(a) of this Article, such pension shall be taxable only in the other Contracting State if the individual is a resident and a national of that State.

(3) The provisions of this Article shall not apply to remuneration and pensions 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 22

Students and trainees

Payments which a student, apprentice or business trainee 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 23

Other income

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

Article 24

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) Guyana tax payable under the laws of Guyana and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Guyana (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

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tax computed by reference to the same profits, income or chargeable gains by reference to which the Guyana tax is computed;

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

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

- (2) In the case of Guyana, double taxation shall be avoided as follows:

Subject to the provisions of the law of Guyana regarding the allowance as a credit against Guyana tax of tax payable in a territory outside Guyana (which shall not affect the general principle hereof), the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention (excluding in the case of a dividend, tax payable on the profits or income of the company paying the dividend) whether by deduction from, or under a computation measured by reference to profits or income from sources within the United Kingdom, shall be allowed as a credit against any Guyana tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed. Where such income is a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Guyana and which controls directly or indirectly not less than 25 per cent of the voting power in the United Kingdom company, the credit shall take into account (in addition to any United Kingdom tax payable in respect of the dividend) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.

(3) For the purposes of paragraph (1) of this Article, the term “Guyana tax payable” shall be deemed to include any amount which would have been payable as Guyana 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 Guyana law:

- (a) (i) Section 2(1) and (3) of the Income Tax (in Aid of Industry) Act, Chapter 81:02 of 1973;
- (ii) Section 91 of the Income Tax Act, Chapter 81:01 when exercised in respect of dividends paid out of profits which were exempted from tax under section 2(1) and (3) of the Income Tax (in Aid of Industry) Act, Chapter 81:02 of 1973

so far as they were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or

- (b) any other provision which may subsequently be made granting an exemption or reduction 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 ten years after the exemption from, or reduction of, Guyana tax was first granted in respect of that source.

(4) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains 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 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.

(3) Except where the provisions of Article 10, paragraph (6) of Article 12, paragraph (6) of Article 13, or paragraph (6) of Article 14 of this Convention apply, interest, royalties 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.

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

(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 or to its nationals.

(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 the provisions of 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 as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is not contrary to this Convention, in particular to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution

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in respect of, or the determination of appeals in relation to, the taxes covered by 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 so 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.

Article 28

Members of diplomatic or permanent missions and consular posts

(1) Nothing in this Convention shall affect any fiscal privileges accorded to 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 of any third State which is situated in the other Contracting State or who is an official of an international organisation, and any member 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 or capital gains from sources therein.

Article 29

Entry into force

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

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the later of these notifications 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 later of these notifications is given;
- (b) in Guyana:
 - (i) with respect to tax withheld at the source on amounts paid, credited or remitted to non-residents on or after the first day of January in the calendar year in which the later of these notifications is given; and
 - (ii) with respect to other Guyana tax for the year of income commencing 1st January in the calendar year 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 this Convention by giving notice of termination, through diplomatic channels, at least six months before the end of any calendar year after the expiration of five years

from the date of entry into force of the Convention. In such event, this Convention 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 6th April in the calendar year next following that in which the notice is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (b) in Guyana:
 - (i) with respect to tax withheld at the source on amounts paid, credited or remitted to non-residents on or after January 1st in the calendar year next following that in which such notice is given;
 - (ii) with respect to other Guyana tax for the year of income commencing January 1st, in the calendar year next following that in which such notice is given.

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

Done in duplicate at Georgetown this 31st day of August 1992.

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

Robert D. Gordon

For the Government of the Co-operative
Republic of Guyana:

Winston Murray

PART II

EXCHANGE OF NOTES

Georgetown
31st August 1992
Excellency

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Co-operative Republic of Guyana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which has been signed today and to propose on behalf of the Government of the United Kingdom that, in applying paragraph (4) of Article 25 (non-discrimination) of that Convention, the expression "other similar enterprises of the first-mentioned State" should be interpreted as referring to enterprises of the United Kingdom or Guyana as the case may be the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more persons who are not residents of the United Kingdom or Guyana.

If the foregoing proposal is acceptable to the Government of the Co-operative Republic of Guyana I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments in this matter.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Robert D. Gordon

His Excellency the High
Commissioner of the

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United Kingdom of
Great Britain and
Northern Ireland
Georgetown
31st August 1992
Excellency

I am in receipt of your Note dated August 31st, 1992 which states as follows:

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Co-operative Republic of Guyana for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which has been signed today and to propose on behalf of the Government of the United Kingdom that, in applying paragraph (4) of Article 25 (Non-Discrimination) of that Convention, the expression "Other similar enterprises of the first-mentioned State" should be interpreted as referring to enterprises of the United Kingdom or Guyana as the case may be the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more persons who are not residents of the United Kingdom or Guyana.

The foregoing proposal being acceptable to the Government of Guyana, I have the honour to confirm that Your Excellency's Note and this Reply should be regarded as constituting an agreement between the two Governments in this matter.

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

Winston Murray

His Excellency the Deputy
Prime Minister, Trade, Tourism
and Industry performing the
duties of the Minister of Finance
of the Co-operative Republic
of Guyana

EXPLANATORY NOTE

(This note is not part of the Order)

The Convention with Guyana is set out in the Schedule to this Order. 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 8).

Income from immovable property may be taxed in the country in which the property is situated (Article 7).

Shipping and air transport profits are generally to be taxed only in the residence state of the operator (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 is not to exceed 10 per cent of the gross amount of the dividends when the beneficial owner is a company controlling at least 10 per cent of the voting power in the company paying the dividends, and 15 per cent in all other cases (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 15 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 state (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 in general not to exceed 10 per cent of the gross amount although in the case of fees arising in Guyana falling within the scope of section 39(10) of the Guyana Income Tax Act, Chapter 81:01, the rate of tax shall not exceed such smaller percentage of the gross amount as may be agreed by the recipient and the Government of Guyana (Article 14).

Each country may tax capital gains in accordance with its domestic law although gains from the alienation of ships or aircraft operated in international traffic shall be taxable only in the country of residence of the operator (Article 15).

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 16 and 17). 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 18). Income derived from the activities of artistes and athletes may be taxed in the country in which those activities are performed (Article 19). Occupational pensions (other than those paid in respect of government service) and annuities are to be taxed only in the recipient's country of residence (Article 20) while government service remuneration and pensions are normally to be taxed only by the paying Government (Article 21). Payments made to visiting students, apprentices and business trainees are generally exempt from tax in the country visited (Article 22). Other income (with the exception of income from trusts and estates of deceased persons under administration) not specified in the Convention remains taxable only in the recipient's country of residence (Article 23).

Where income continues to be taxable in both countries credit will be given in 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 Guyana includes credit for tax spared under certain provisions of Guyana law. In the case of dividends, the United Kingdom will give credit for the underlying tax paid in Guyana where the shareholder is a United Kingdom company which controls at least 10 per cent of the voting power in the company paying the dividends (Article 24).

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

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