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STATUTORY INSTRUMENTS

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**2003 No. 3200**

**INCOME TAX**

**The Double Taxation Relief (Taxes  
on Income)(Chile) Order 2003**

*Made - - - - 10th December 2003*

At the Court at Buckingham Palace, the 10th day of December 2003

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 that 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) (Chile) Order 2003.
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 Republic of Chile 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 Chile;
  - (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 Chile 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.

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(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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*A. K. Galloway*  
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 REPUBLIC OF CHILE FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS**

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Chile, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

Have agreed as follows:

#### CHAPTER I

##### SCOPE OF THE CONVENTION

###### *Article 1*

###### *PERSONS COVERED*

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

###### *Article 2*

###### *TAXES COVERED*

(1) This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State, irrespective of the manner in which they are levied.

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

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

(a) in the case of Chile, the taxes imposed under the Income Tax Act, "*Ley sobre Impuesto a la Renta*" (hereinafter referred to as "Chilean tax"); and

(b) in the case of the United Kingdom:

(i) the income tax;

(ii) the corporation tax, and

(iii) the capital gains tax,

(hereinafter referred to as "United Kingdom tax").

(4) This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall, at the end of each year or earlier, notify each other of any significant changes which have been made in their respective taxation laws.

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## CHAPTER II DEFINITIONS

### *Article 3*

#### *GENERAL DEFINITIONS*

- (1) For the purposes of this Convention, unless the context otherwise requires:
- (a) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, the United Kingdom or Chile;
  - (b) the term “Chile” means the Republic of Chile, including any area outside the territorial sea designated under the laws of the Republic of Chile and in accordance with international law as an area within which the Republic of Chile may exercise sovereign rights with regard to the seabed and subsoil and their natural resources;
  - (c) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea designated under the laws of the United Kingdom and in accordance with international law as an area within which the United Kingdom may exercise sovereign rights with regard to the seabed and subsoil and their natural resources;
  - (d) the term “person” includes an individual, a company and any other body of persons;
  - (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (f) the terms “enterprise of a 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;
  - (g) the term “business” includes the performance of professional services and of other activities of an independent character;
  - (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:
    - (i) in the case of Chile, the Minister of Finance or the Minister’s authorised representative, and
    - (ii) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;
  - (j) the term “national” means:
    - (i) in relation to Chile:
      - (a) any individual possessing the nationality of Chile; and
      - (b) any legal person, other legal entity or association deriving its status as such from the law in force in Chile.
    - (ii) in relation to the United Kingdom:
      - (a) 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
      - (b) any legal person, other legal entity, partnership, or association deriving its status as such from the law in force in the United Kingdom.
- (2) As regards the application of this Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that

time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

#### *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 the person’s domicile, residence, place of management, place of incorporation or any other criterion of a similar nature and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

(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 as follows:

- (a) he shall be deemed to be a resident only 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 only of the State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the State in which his centre of vital interests cannot be determined, or if there is not a permanent home available to him in either State, he shall be deemed to be a resident only 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 only of the State of which he is a national;
- (d) if he is a national of both 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, the competent authorities of the Contracting States shall by mutual agreement endeavour to determine the mode of application of this Convention to the person. In the absence of such agreement by the competent authorities of the Contracting States, the person shall not be entitled to any relief or exemption from tax provided for by this Convention, except as provided for by paragraph (2) of Article 21 of this Convention.

(4) An item of income, profit or gain derived through a person that is fiscally transparent under the laws of either Contracting State shall be considered to be derived by a resident of a Contracting State to the extent that the item is treated for the purposes of the taxation law of that Contracting State as the income, profit or gain of a resident.

(5) Notwithstanding any other provision of this Convention, an investment fund established and administered in Chile under law No 18,657 (Foreign Capital Investment Fund) of Chile or any substantially similar legislation enacted in Chile after the signature of this Convention shall, for the purposes of this Convention, be treated as a resident of Chile and subject to taxation in accordance with the laws of Chile in respect of income, profits or gains derived from property or investment in Chile, or in respect of remittances out of such income, profits or gains.

(6) 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 taxed in the other Contracting State.

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## 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) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry or any other place relating to the exploration for or the exploitation of natural resources.

(3) The term “permanent establishment” shall also include:

- (a) a building site or construction or installation project and supervisory activities in connection therewith, but only if such building site, construction or installation project or supervisory activities last more than six months; and
- (b) the performance of professional services and of other activities of an independent character in a Contracting State, if such activities are carried on within that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period; and
- (c) the performance of professional services and of other activities of an independent character in a Contracting State by an individual, if that individual is present in that Contracting State for a period or periods exceeding in the aggregate 183 days within any twelve month period.

(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 advertising, supplying information or carrying out scientific research for the enterprise, and any other similar activity of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1), (2), and (3) of this Article, where a person (other than an agent of an independent status to whom paragraph (7) 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 on behalf 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.

(6) Notwithstanding the preceding provisions of this Article, an insurance enterprise shall, except with regard to reinsurance, be deemed to have a permanent establishment in a Contracting State if

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it insures risks situated therein through a person other than an agent of independent status to whom paragraph (7) of this Article applies.

(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.

### CHAPTER III

#### TAXATION OF INCOME

##### *Article 6*

##### *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 and aircraft shall not be regarded as immovable property.

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

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

##### *Article 7*

##### *BUSINESS PROFITS*

(1) The business 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) of this Article, 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 executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

(5) For the purposes of the preceding paragraphs of this Article, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

(7) In applying paragraphs (1) and (2) of this Article, income or profits attributable to a permanent establishment may, notwithstanding that the permanent establishment has ceased to exist, be taxed in the Contracting State in which it was situated.

(8) Nothing in this Convention shall affect the taxation in Chile of a resident of the United Kingdom in respect of profits attributable to a permanent establishment situated in Chile, under both the first category tax and the additional tax.

(9) Nothing in this Convention shall affect the application of the existing provisions of the Chilean legislation Decree Law 600 (Foreign Investment Statute) as they are in force at the time of signature of this Convention and as they may be amended from time to time without changing the general principle thereof.

#### *Article 8*

##### *SHIPPING AND AIR TRANSPORT*

(1) Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State. Profits derived by an enterprise from the inland transport of property or passengers within either Contracting State shall be treated as profits from the operation of ships or aircraft in international traffic if such transport is undertaken as part of international transport conducted by such enterprise.

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

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

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

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

#### *Article 9*

##### *ASSOCIATED ENTERPRISES*

(1) Where

- (a) an enterprise of a 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 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 10*

#### *DIVIDENDS*

(1) Dividends paid by a company that 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 dividend is a resident and according to the laws of that State, but if the dividends are beneficially owned by a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent. of the gross amount of the dividends if the beneficial owner is a company that owns directly or indirectly at least 20 per cent. of the voting stock of the company paying the dividends;
- (b) 15 per cent. of the gross amount of the dividends in all other cases.

This paragraph shall not affect the taxation of the company's profits out of which the dividends are paid. In the case of Chile, this taxation includes the application of the additional tax.

(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 and 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 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(5) Where a company that 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 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 such other State.

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

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## Article 11

### 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 laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed:

(a) 5 per cent. of the gross amount of the interest derived from:

(i) loans granted by banks and insurance companies;

(ii) bonds or securities that are regularly and substantially traded on a recognized securities market;

(iii) a sale on credit paid by the purchaser of machinery and equipment to a beneficial owner that is the seller of the machinery and equipment.

(b) 15 per cent. of the gross amount of the interest in all other cases.

(3) The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and in particular, income from government securities and income from bonds or debentures, as well as income which is subjected to the same taxation treatment as income from money lent by the laws of the State in which the income arises. The term interest shall not include any item which is treated as a dividend under the provisions of Article 10 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment 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 exceeds, for whatever reason, the amount that 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 debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.

## Article 12

### 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.

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(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 beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed:

- (a) 5 per cent. of the gross amount of the royalties for the use of, or the right to use, any industrial, commercial or scientific equipment;
- (b) 10 per cent. of the gross amount of the royalties, in all other cases.

(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, scientific or other work, (including computer software and cinematographic films) including works reproduced on audio or video tapes or disks or any other means of image or sound reproduction, any patent, trade mark, design or model, plan, secret formula or process or other intangible property, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the State in which the permanent establishment 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 that 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 13*

#### *CAPITAL GAINS*

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

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in that Contracting State.

(4) Gains derived by a resident of a Contracting State, from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State or from

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the alienation of an interest in a partnership or trust established under the laws of either the United Kingdom or Chile, may be taxed in the other Contracting State if,

- (a) the alienator at any time during the twelve month period preceding such alienation owned, directly or indirectly, shares or other rights representing 20 per cent. or more of the capital of that company, or
- (b) the gains derive more than 50 per cent. of their value directly or indirectly from immovable property referred to in Article 6 of this Convention situated in that other Contracting State.

Any other gains derived by a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State may also be taxed in that other Contracting State but the tax so charged shall not exceed 16 per cent. of the amount of the gain.

Notwithstanding any other provision of this paragraph, gains derived by a pension fund that is a resident of a Contracting State from the alienation of shares or other rights representing the capital of a company that is a resident of the other Contracting State shall be taxable only in the first-mentioned Contracting State.

(5) Gains from the alienation of any property other than that referred to in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(6) The provisions of this Article shall not affect the right of a Contracting State to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is a resident of that State at any time during the fiscal year in which the property is alienated, or has been so resident at any time during the six fiscal years immediately preceding that year.

#### *Article 14*

##### *INCOME FROM EMPLOYMENT*

(1) Subject to the provisions of Articles 15, 17 and 18 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 twelve month period commencing or ending in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer being a person who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in that State.

*Article 15*

*DIRECTORS' FEES*

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

*Article 16*

*ENTERTAINERS AND SPORTSMEN*

(1) Notwithstanding the provisions of Articles 7 and 14 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 a sportsman, 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 a sportsman in his capacity as such accrues not to the entertainer or sportsman but to another person, that income may, notwithstanding the provisions of Articles 7 and 14 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

*Article 17*

*PENSIONS, MAINTENANCE PAYMENTS AND PENSIONS CONTRIBUTIONS*

(1) Pensions arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in the first-mentioned State.

(2) Periodic payments, made pursuant to a written separation agreement or a decree of divorce, separate maintenance or compulsory support, including payments for the support of a child, paid by a resident of a Contracting State to a resident of the other Contracting State, shall be exempt from tax in both Contracting States, except that, if the payer is entitled to relief from tax for such payments in the first-mentioned State, such payments shall be taxable only in the other State.

(3) Contributions paid in respect of employment or self-employment by, or on behalf of, an individual who is a resident of a Contracting State, or who is temporarily present in that State, to a pension plan that is recognised for tax purposes in the other Contracting State shall be treated for tax purposes in the first-mentioned State in the same way and subject to the same conditions and limitations as contributions paid to a pension plan that is recognised for tax purposes in that first-mentioned State, to the extent that they are not so treated by the other State, if:

- (a) such individual was contributing on a regular basis to the pension plan for a period ending immediately before that individual became a resident of or temporarily present in the first-mentioned State; and
- (b) payments made to the scheme by the individual's employer would not be deemed in the other State to be taxable income of the individual; and
- (c) the competent authority of the first-mentioned State agrees that the pension plan generally corresponds to a pension plan recognised for tax purposes by that State.

*Article 18*

*GOVERNMENT SERVICE*

- (a) (1) (a) Salaries, wages and other similar 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.

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- (b) Notwithstanding the provisions of sub-paragraph (a) of this paragraph, such salaries, wages and other similar remuneration shall be taxable only in the other 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 Articles 14, 15 and 16 of this Convention shall apply to salaries, wages and other similar 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 19*

##### *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 that individual's education or training receives for the purpose of that individual's maintenance, education or training shall not be taxed in that State, if such payments arise from sources outside that State.

#### *Article 20*

##### *OTHER INCOME*

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention 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 immovable 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, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 of this Convention shall apply.

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, items of income of a resident of a Contracting State not dealt with in the foregoing Articles of this Convention and arising in the other Contracting State may also be taxed in that other State.

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

(5) 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 income is paid to take advantage of this Article by means of that creation or assignment.

CHAPTER IV  
METHODS FOR AVOIDANCE OF DOUBLE TAXATION

*Article 21*

*RELIEF FROM DOUBLE TAXATION*

- (1) In the case of Chile, double taxation shall be avoided as follows:
- (a) a resident of Chile, obtaining income which has, in accordance with the provisions of this Convention, been subject to taxation in the United Kingdom, may credit the tax so paid against any Chilean tax payable in respect of the same income, subject to the applicable provisions of the law of Chile. This paragraph shall apply to all income referred to in this Convention;
  - (b) where, in accordance with any provision of this Convention, income derived by a resident of Chile is exempt from tax in Chile, Chile may nevertheless, in calculating the amount of tax on other income, take into account the exempted income.
- (2) 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) Chilean tax payable under the laws of Chile and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Chile (excluding in the case of a dividend, tax payable in Chile on income, profits or gains 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, income or chargeable gains by reference to which the Chilean tax is computed;
  - (b) in the case of a dividend paid by a company which is a resident of Chile 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 Chilean tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Chilean tax payable in respect of the income, profits or gains out of which such dividend is paid.
- (3) For the purposes of paragraph (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State that may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

CHAPTER V  
SPECIAL PROVISIONS

*Article 22*

*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, in particular with respect to residence, are or may be subjected.
- (2) The taxation on a permanent establishment that 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.

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(3) Nothing in this Article shall be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities that it grants to its own residents or to its nationals.

(4) Except where the provisions of paragraph (1) of Article 9, paragraph (6) or (7) of Article 11, paragraph (6) or (7) of Article 12 or paragraph (4) or (5) of Article 20 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.

(5) Companies that are residents 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 that is other or more burdensome than the taxation and connected requirements to which other similar companies of the first-mentioned State are or may be subjected.

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

### *Article 23*

#### *MUTUAL AGREEMENT PROCEDURE*

(1) Where a person 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 or, if his case comes under paragraph (1) of Article 22 of this Convention, to that of the Contracting State of which he is a national.

(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 this 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 this Convention.

(4) For the purposes of paragraph (3) of Article XXII (Consultation) of the General Agreement on Trade in Services, the Contracting States agree that, notwithstanding that paragraph, any dispute between them as to whether a measure falls within the scope of this Convention may be brought before the Council for Trade in Services, as provided by that paragraph, only with the consent of both Contracting States. Any doubt as to the interpretation of this paragraph shall be resolved under paragraph (3) of this Article or, failing agreement under that procedure, pursuant to any other procedure agreed to by both Contracting States.

(5) 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 24*

#### *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 evasion and avoidance. The exchange of information is not restricted by Article 1 of this Convention. 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 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 a Contracting State the obligation:

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

(3) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same way as if its own taxation were involved even though the other State does not, at that time, need such information.

(4) If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of copies of unedited original documents (including books, papers, statements, records, accounts or writings), to the same extent that such documents can be obtained under the laws and administrative practices of that other State with respect to its own taxes.

#### *Article 25*

#### *MEMBERS OF DIPLOMATIC OR PERMANENT MISSIONS AND CONSULAR POSTS*

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.

### CHAPTER VI

#### FINAL PROVISIONS

#### *Article 26*

#### *ENTRY INTO FORCE*

(1) Each of the Contracting States shall notify the other through diplomatic channels of the completion of the procedures required by law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications.

(2) The provisions of this Convention shall have effect:

- (a) in Chile,
  - in respect of taxes on income obtained and amounts paid, credited to an account, made available or accounted as an expense, on or after 1st January in the calendar year next following that in which this Convention enters into force; and
- (b) 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 this Convention enters into force;

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

*Article 27*

*TERMINATION*

(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may, on or before 30th June in any calendar year beginning after the year in which this Convention enters into force, terminate this Convention by giving to the other Contracting State notice of termination in writing through diplomatic channels.

(2) The provisions of this Convention shall cease to have effect:

(a) in Chile,

in respect of taxes on income obtained and amounts paid, credited to an account, made available or accounted as an expense, on or after 1st January in the calendar year next following that in which the notice is given; and

(b) 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.

IN WITNESS WHEREOF the undersigned, duly authorised to that effect, have signed this Convention.

DONE in duplicate at London, this 12th day of July 2003 in the English and Spanish languages, both texts being equally authoritative.

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**FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:**      **FOR THE GOVERNMENT OF THE REPUBLIC OF CHILE:**

*Paul Boateng*

*Nicolas Eyzaguirre Guzman*

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**PART II**

**EXCHANGE OF NOTES**

Your Excellency

London

12th July 2003

I have the honour to refer to the Convention between the Government of the Republic of Chile and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the Republic of Chile the following proposals:

### *In General*

It is understood that the two Governments shall, through the competent authorities, consult together regarding the terms, operation and application of the Convention to ensure that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion and shall, where they consider it appropriate, conclude Protocols to amend the Convention.

Either Government may at any time request consultations, to be conducted by the competent authorities in an expeditious manner on matters relating to the terms, operation and application of the Convention which it considers require urgent resolution.

It is agreed that if, after the date on which the Convention enters into force, either Contracting State introduces a tax on capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Convention by extending its scope to include any tax on capital so introduced.

### *With reference to paragraph (3) of Article 5 (Permanent Establishment)*

For the purposes of preventing misuse of Articles 5 and 7, in determining the duration of activities under this paragraph, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise (other than enterprises of that Contracting State) may be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

### *With reference to paragraph (7) of Article 5 (Permanent Establishment)*

It is understood that where the commercial or financial conditions made or imposed between the broker or agent and the enterprise differ from those which would be made between independent persons, such broker or agent will not be considered an agent of independent status within the meaning of paragraph (7) of Article 5.

### *With reference to Article 7 (Business Profits)*

It is understood that the provisions of paragraph (3) of the Article shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the permanent establishment is situated.

### *With reference to paragraph (2) of Article 9 (Associated Enterprises)*

It is understood that the provisions of paragraph (2) of Article 9 are not to be construed as requiring a Contracting State to make any adjustment to the amount of profits charged to tax in that State unless it is satisfied that the action taken by the other Contracting State under paragraph (1) of the Article is justified both in principle and as regards the amount of any adjustment to profits made by that other State.

### *With reference to paragraph (2) of Article 10 (Dividends)*

It is agreed that, in relation to the application of the additional tax under the laws of Chile, should:

- (i) the first category tax cease to be fully creditable in computing the amount of additional tax to be paid; or

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(ii) the rate of additional tax imposed with respect to residents of the United Kingdom, as determined under the provisions of Article 4 of this Convention exceed 42 per cent.

the Contracting States shall consult with each other with a view to amending the Convention to re-establish the balance of benefits under the Convention.

*With reference to paragraph (2) of Article 11 (Interest) and paragraph (2) of Article 12 (Royalties)*

It is agreed that if any agreement or convention between Chile and a member state of the Organisation for Economic Co-operation and Development entering into force after the date of entry into force of the Convention provides that Chile shall exempt from tax interest or royalties (either generally or in respect of specific categories of interest or royalties) arising in Chile, or limit the tax charged in Chile on such interest or royalties (either generally or in respect of specific categories of interest or royalties) to a rate lower than that provided for in paragraph (2) of Article 11 or paragraph (2) of Article 12 of the Convention, such exemption or lower rate shall automatically apply to interest or royalties (either generally or in respect of those specific categories of interest or royalties) arising in Chile and beneficially owned by a resident of the United Kingdom and interest or royalties arising in the United Kingdom and beneficially owned by a resident of Chile under the same conditions as if such exemption or lower rate had been specified in those paragraphs. The competent authority of Chile shall inform the competent authority of the United Kingdom without delay that the conditions for the application of this paragraph have been met.

*With reference to Article 12 (Royalties)*

If the rights acquired in relation to the copyright of a non-customised software program (so-called “shrink-wrapped” software) are limited to those necessary to enable the user to operate the program, the payment received in connection with the transfer of those rights, shall be treated as business profits subject to Article 7.

*With reference to paragraph (1) of Article 14 (Income from Employment) and paragraphs (1) and (2) of Article 18 (Government Service)*

It is understood that the expression “salaries, wages and other similar remuneration” shall be interpreted to mean all types of remuneration derived by the resident, including benefits in kind received in respect of the employment.

*With reference to paragraph (1) of Article 17 (Pensions, Maintenance Payments and Pension Contributions)*

It is understood that the term “pensions” includes any payments made to a scheme member or beneficiary in accordance with the scheme’s rules by a pension scheme that is recognised for tax purposes by the Contracting State in which the pension arises.

If the foregoing proposals are acceptable to the Government of the United Kingdom, 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, which shall enter into force at the same time as the entry into force of the Convention.

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

Minister of Finance

*Nicolas Eyzaguirre Guzman*

Your Excellency

London

12th July 2003

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads 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 Republic of Chile for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital Gains which has been signed today and to make on behalf of the Government of the Republic of Chile the following proposals:

#### In General

It is understood that the two Governments shall, through the competent authorities, consult together regarding the terms, operation and application of the Convention to ensure that it continues to serve the purposes of avoiding double taxation and preventing fiscal evasion and shall, where they consider it appropriate, conclude Protocols to amend the Convention.

Either Government may at any time request consultations, to be conducted by the competent authorities in an expeditious manner on matters relating to the terms, operation and application of the Convention which it considers require urgent resolution.

It is agreed that if, after the date on which the Convention enters into force, either Contracting State introduces a tax on capital under its domestic law, the Contracting States will enter into negotiations with a view to concluding a Protocol to amend the Convention by extending its scope to include any tax on capital so introduced.

#### With reference to paragraph (3) of Article 5 (Permanent Establishment)

For the purposes of preventing misuse of Articles 5 and 7, in determining the duration of activities under this paragraph, the period during which activities are carried on in a Contracting State by an enterprise associated with another enterprise (other than enterprises of that Contracting State) may be aggregated with the period during which activities are carried on by the enterprise with which it is associated if the first-mentioned activities are connected with the activities carried on in that State by the last-mentioned enterprise, provided that any period during which two or more associated enterprises are carrying on concurrent activities is counted only once. An enterprise shall be deemed to be associated with another enterprise if one is controlled directly or indirectly by the other, or if both are controlled directly or indirectly by a third person or persons.

#### With reference to paragraph (7) of Article 5 (Permanent Establishment)

It is understood that where the commercial or financial conditions made or imposed between the broker or agent and the enterprise differ from those which would be made between independent persons, such broker or agent will not be considered an agent of independent status within the meaning of paragraph (7) of Article 5.

#### With reference to Article 7 (Business Profits)

It is understood that the provisions of paragraph (3) of the Article shall apply only if the expenses can be attributed to the permanent establishment in accordance with the provisions of the tax legislation of the Contracting State in which the permanent establishment is situated.

#### With reference to paragraph (2) of Article 9 (Associated Enterprises)

It is understood that the provisions of paragraph (2) of Article 9 are not to be construed as requiring a Contracting State to make any adjustment to the amount of profits charged to tax in that State unless it is satisfied that the action taken by the other Contracting State under paragraph (1) of the

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Article is justified both in principle and as regards the amount of any adjustment to profits made by that other State.

With reference to paragraph (2) of Article 10 (Dividends)

It is agreed that, in relation to the application of the additional tax under the laws of Chile, should:

- (i) the first category tax cease to be fully creditable in computing the amount of additional tax to be paid; or
- (ii) the rate of additional tax imposed with respect to residents of the United Kingdom, as determined under the provisions of Article 4 of this Convention exceed 42 per cent.

the Contracting States shall consult with each other with a view to amending the Convention to re-establish the balance of benefits under the Convention.

With reference to paragraph (2) of Article 11 (Interest) and paragraph (2) of Article 12 (Royalties)

It is agreed that if any agreement or convention between Chile and a member state of the Organisation for Economic Co-operation and Development entering into force after the date of entry into force of the Convention provides that Chile shall exempt from tax interest or royalties (either generally or in respect of specific categories of interest or royalties) arising in Chile, or limit the tax charged in Chile on such interest or royalties (either generally or in respect of specific categories of interest or royalties) to a rate lower than that provided for in paragraph (2) of Article 11 or paragraph (2) of Article 12 of the Convention, such exemption or lower rate shall automatically apply to interest or royalties (either generally or in respect of those specific categories of interest or royalties) arising in Chile and beneficially owned by a resident of the United Kingdom and interest or royalties arising in the United Kingdom and beneficially owned by a resident of Chile under the same conditions as if such exemption or lower rate had been specified in those paragraphs. The competent authority of Chile shall inform the competent authority of the United Kingdom without delay that the conditions for the application of this paragraph have been met.

With reference to Article 12 (Royalties)

If the rights acquired in relation to the copyright of a non-customised software program (so-called “shrink-wrapped” software) are limited to those necessary to enable the user to operate the program, the payment received in connection with the transfer of those rights, shall be treated as business profits subject to Article 7.

With reference to paragraph (1) of Article 14 (Income from Employment) and paragraphs (1) and (2) of Article 18 (Government Service)

It is understood that the expression “salaries, wages and other similar remuneration” shall be interpreted to mean all types of remuneration derived by the resident, including benefits in kind received in respect of the employment.

With reference to paragraph (1) of Article 17 (Pensions, Maintenance Payments and Pension Contributions)

It is understood that the term “pensions” includes any payments made to a scheme member or beneficiary in accordance with the scheme’s rules by a pension scheme that is recognised for tax purposes by the Contracting State in which the pension arises.

If the foregoing proposals are acceptable to the Government of the United Kingdom, I have the honour to suggest that the present Note and Your Excellency’s reply to that effect should be regarded

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as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of the Convention.”

The foregoing proposals being acceptable to the Government of the United Kingdom, I have the honour to confirm that Your Excellency’s Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.

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

*Paul Boateng*

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## EXPLANATORY NOTE

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

A Convention dealing with the avoidance of double taxation and fiscal evasion between the United Kingdom and Chile (“the Convention”) is set out in Part I of the Schedule to this Order.

Article 1 of the Order provides for its citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Convention contained in Part I of the Schedule to the Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule, and that it is expedient that those arrangements should have effect.

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).

Income from immovable property and gains derived from the alienation of such property may be taxed in the country in which the property is situated (Articles 6 and 13).

Profits and gains from international shipping and air transport are generally to be taxed only in the residence state of the enterprise (operator) (Articles 8 and 13).

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

The rate of tax imposed in the country of source on dividends derived and beneficially owned by a resident of the other country shall not, in general, exceed 15 per cent. of the gross amount of the dividends. If the beneficial owner is a company which owns at least 20 per cent. of the voting power in the company paying the dividends, the rate of tax imposed in the country of source shall not exceed 5 per cent. of the gross amount of the dividends (Article 10).

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 provided the recipient is the beneficial owner of the interest. In the case of certain categories of interest the rate of tax imposed in the country of source shall not exceed 5 per cent. of the gross amount of interest (Article 11).

The rate of tax imposed in the country of source on royalties is limited to 5 per cent. of the gross amount in respect of the use of or right to use industrial, commercial or scientific equipment and 10 per cent. of the gross amount in all other cases, where, in either case, the recipient is the beneficial owner of the royalties (Article 12).

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Subject to certain specified exceptions, each country may generally tax capital gains in accordance with its domestic law (Article 13).

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 (Article 14). 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 that other country (Article 15). Income derived from the activities of entertainers and sportsmen may be taxed in the country in which those activities are performed (Article 16).

Pensions are to be taxed only in the country of source. Contributions paid in respect of employment or self-employment by, or on behalf of, an individual who is a resident of one country, or who is temporarily present there, to an approved pension plan in the other country shall, subject to certain conditions, be treated for tax purposes in the same way and subject to the same conditions and limitations as contributions paid to an approved pension plan in the country of residence (Article 17).

Government service remuneration is normally to be taxed only by the paying Government (Article 18). There are separate provisions for diplomatic or consular officials (Article 25). Certain payments made to visiting students and business apprentices are generally exempt from tax in the country visited (Article 19).

Other income not specified in the Convention will generally be taxed only by the country of which the beneficial owner is a resident. However, if such income arises in the other country, it may also be taxed in that country (Article 20).

In general, where income continues to be taxable in both countries, credit is to be given by the country of the taxpayer's residence for tax imposed by the other country (Article 21).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 22).

There are also provisions for consultation to resolve difficulties in the application or interpretation of the Convention (Article 23) and for exchanges of information between the taxation authorities of the two countries (Article 24).

The Exchange of Notes comprising Part II of the Schedule clarifies the intended interpretation of certain parts of the Convention.

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. It will take effect in the United Kingdom in respect of corporation tax from 1st April in the following calendar year; and from 6th April of that year for income tax and capital gains tax. It will take effect in Chile on or after 1st January in the calendar year next following the date on which the Convention enters into force (Article 28). The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.