

Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2010 No.

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International Tax
Enforcement (Federal Republic of Germany) Order 2010**

Made - - - - [date] [Month] 2010

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010⁽¹⁾ and section 173(7) of the Finance Act 2006⁽²⁾ and approved by a resolution of that House.

Accordingly Her Majesty, in the exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Federal Republic of Germany) Order 2010.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(1) 2010 c. 8.
(2) 2006 c. 25.

- (a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order, the Protocol set out in Part 2 of that Schedule and the Joint Declaration set out in Part 3 of that Schedule have been made with the Federal Republic of Germany;
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar character imposed by the laws of the Federal Republic of Germany and for the purpose of assisting international tax enforcement; and
- (c) it is expedient that the arrangements should have effect.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

**CONVENTION
BETWEEN
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND
THE FEDERAL REPUBLIC OF GERMANY
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF
FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL**

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany,

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

Have agreed as follows:

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 imposed on behalf of a Contracting State, of a "Land" or a political subdivision or local authority of a "Land" or a Contracting State, irrespective of the manner in which they are levied.

2) There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.

3) The existing taxes which are the subject of this Convention are in particular:

a) in the United Kingdom:

aa) the income tax;

bb) the corporation tax; and

cc) the capital gains tax;

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

b) in the Federal Republic of Germany:

aa) the income tax ("Einkommensteuer");

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The Double Taxation Relief and International Tax Enforcement (Federal Republic of Germany) Order 2010 No. 2975

- bb) the corporation tax (“Körperschaftsteuer”);
 - cc) the trade tax (“Gewerbesteuer”); and
 - dd) the capital tax (“Vermögensteuer”);
- including the supplements levied thereon
- (hereinafter referred to as “German tax”);

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

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 the United Kingdom or the Federal Republic of Germany, as the context requires;
 - b) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea-bed and subsoil and their natural resources may be exercised;
 - c) the term “Germany” means the Federal Republic of Germany and, when used in a geographical sense, the territory of the Federal Republic of Germany, as well as the area of the sea-bed, its subsoil and the superjacent water column adjacent to the territorial sea, wherein the Federal Republic of Germany exercises sovereign rights and jurisdiction in conformity with international law and its national legislation for the purpose of exploring, exploiting, conserving and managing the living and non-living 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 term “enterprise” applies to the carrying on of any business;
 - g) the term “business” includes the performance of professional services and of other activities of an independent character;
 - h) 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;
 - i) 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;

j) the term “national” means:

aa) 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;

bb) in relation to Germany, any German within the meaning of the Basic Law for the Federal Republic of Germany and any legal person, partnership and association deriving its status as such from the laws in force in Germany;

k) the term “competent authority” means:

aa) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative.

bb) in the case of Germany, the Federal Ministry of Finance or the agency to which it has delegated its powers;

2) As regards the application of the 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 Contracting State for the purposes of the taxes to which the 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 his 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 of a “Land” or a Contracting State. This term, however, does not include any person who is liable to tax in that Contracting State only if he derives income or capital gains from sources therein or capital situated therein.

2) Where by reason of the provisions of paragraph 1 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 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 only 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 does not have a permanent home available to him in either Contracting State, he shall be deemed to be a resident only 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 only of the Contracting State of which he is a national;

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- 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.
- 4) If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship 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) an office;
 - d) a factory;
 - e) a workshop, and
 - f) a mine, 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), 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, where a person (other than an agent of an independent status to whom paragraph 6 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 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) 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

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 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 shall also apply to the income from immovable property of an enterprise.

Article 7

Business profits

1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is 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 executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5) 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.

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

7) 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 8

Shipping and air transport

1) Profits of an enterprise 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) 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 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 the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

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 beneficial owner of the dividends 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 dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends;
 - b) 10 per cent of the gross amount of the dividends if the beneficial owner is a pension scheme;
 - c) 15 per cent of the gross amount of the dividends in all other cases.

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

- 3) The term "dividends" as used in this Article means income from shares, "jouissance"

shares or “jouissance” rights, mining shares, founders' shares or other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident, and income from distributions on certificates of a German “Investmentvermögen”.

4) The provisions of paragraphs 1 and 2 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 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 situated in that other State, nor subject the company's undistributed profits to a tax on the company's 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) No relief shall be available under this Article 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.

Article 11

Interest

1) Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2) 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, including premiums and prizes attaching to such securities, bonds or debentures. The term interest shall not include any item which is treated as a dividend under the provisions of Article 10. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

3) The provisions of paragraph 1 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 shall apply.

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

5) No relief shall be available under this Article 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 beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.
- 2) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.
- 3) The provisions of paragraph 1 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.
- 4) 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 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.
- 5) No relief shall be available under this Article 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 and situated in the other Contracting State may be taxed in that other State.
- 2) Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests in a company or any other body of persons, deriving more than 50 per cent of their value directly or indirectly from immovable property situated in the other Contracting State may be taxed in that other State.
- 3) 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.
- 4) Gains derived by a resident of a Contracting State from the alienation of ships or

aircraft operated in international traffic by an enterprise of that State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

5) Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

Income from employment

1) Subject to the provisions of Articles 15, 17, 18 and 19 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, 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 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 a 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 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 16

Artistes and sportsmen

1) Notwithstanding the provisions of Articles 7 and 14, 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 himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 14, be taxed in

the Contracting State in which the activities of the entertainer or sportsman are exercised.

3) Paragraphs 1 and 2 shall not apply to income accruing from the exercise of activities by artistes or sportsmen in a Contracting State where the visit to that State is financed entirely or mainly from public funds of the other Contracting State, a “Land”, a political subdivision or a local authority of a “Land” or a Contracting State or by an organisation which in that other State is recognised as a charitable organisation. In such a case the income shall be taxable only in the Contracting State of which the individual is a resident.

Article 17

Pensions, annuities and similar payments

1) Subject to the provisions of paragraph 2 of Article 18, pensions, other similar remuneration or annuities arising in a Contracting State and paid to a resident of the other Contracting State, shall be taxable only in that other State.

2) Notwithstanding the provisions of paragraph 1, payments which are made in accordance with the social insurance legislation of a Contracting State shall be taxable only in that State.

3) Notwithstanding the provisions of paragraph 1, such a pension, similar remuneration or annuity arising in a Contracting State which is attributable in whole or in part to contributions which, for more than 15 years in that State,

- a) did not form part of the taxable income from employment, or
- b) were tax-deductible, or
- c) were tax-relieved in some other way

shall be taxable only in that State. This paragraph shall not apply if that State does not effectively tax the pension, other similar remuneration or annuity, or if the tax relief was clawed back for any reason, or if the 15 year condition is fulfilled in both Contracting States.

4) Notwithstanding the provisions of paragraph 1, recurrent or non-recurrent payments made by one of the Contracting States or a political subdivision thereof to a resident of the other Contracting State as compensation for political persecution or for an injury or damage sustained as a result of war (including restitution payments) or of military or civil alternative service or of a crime, a vaccination or a similar event shall be taxable only in the first-mentioned State.

5) The term “annuities” means certain amounts payable periodically at stated times, for life or for a specified or ascertainable period of time, under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

Article 18

Government service

1) Salaries, wages and other similar remuneration, paid by a Contracting State, a “Land”, a political subdivision or a local authority of a “Land” or a Contracting State or some other legal entity under public law of that State to an individual in respect of services rendered to that State, “Land”, political subdivision or local authority or some other legal entity under public law shall be taxable only in that State. However, 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

- a) is a national of that State or
- b) did not become a resident of that State solely for the purpose of rendering the services.

2) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State, a “Land” or a political subdivision or a local authority of a “Land” or a Contracting State or some other legal entity under public law of that State to an individual in respect of services rendered to that State, “Land”, subdivision or authority or legal entity under public law shall be taxable only in that State. However, such pensions and other similar remuneration shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

3) The provisions of Articles 14, 15, 16, and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State, a “Land”, a political subdivision or a local authority of a “Land” or a Contracting State or some other legal entity under public law of that State.

4) The provisions of paragraphs 1 and 2, shall also apply to salaries, wages, pensions, and other similar remuneration paid to an individual in respect of services rendered to the Goethe Institute, the German Academic Exchange Service (“Deutscher Akademischer Austauschdienst”), or to other comparable institutions mutually agreed by the competent authorities of the Contracting States.

Article 19

Visiting professors, teachers and students

1) An individual who visits a Contracting State for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college, school, museum or other cultural or educational institution of that State or under an official programme of cultural exchange and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first mentioned State on his remuneration for such activity, provided that such remuneration is derived by him from outside that State.

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

Article 20

Offshore activities

1) The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2) An enterprise of a Contracting State which carries on activities offshore in the other Contracting State in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources in areas which are, in accordance with international law, under the jurisdiction of the other Contracting State shall, subject to paragraphs 3 and 5, be deemed, except as regards paragraph 2 of Article 14, to be carrying on in respect of those activities a business in

that other Contracting State through a permanent establishment situated therein.

3) The provisions of paragraph 2 shall not apply where the activities referred to therein are carried on in the areas specified in that paragraph for a period not exceeding a total of:

- a) in the case of activities in connection with exploration, 90 days in any period of twelve months commencing or ending in the fiscal year concerned; and
- b) in the case of activities in connection with exploitation, 30 days in any period of twelve months commencing or ending in the fiscal year concerned.

4) However, for the purposes of paragraph 3, where an enterprise carrying on activities referred to in paragraph 2 in those specified areas is associated with another enterprise carrying on substantially similar activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise except to the extent that those activities are carried on at the same time as its own activities. An enterprise shall be regarded as associated with another enterprise if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third person or persons.

5) Profits derived by a resident of a Contracting State from the transportation of supplies or personnel to a location where activities in connection with the exploration or exploitation of the sea-bed and subsoil and their natural resources are being carried on in areas which are under the jurisdiction of a Contracting State or from the operation of tugboats and similar vessels in connection with such activities, shall be taxable only in the Contracting State of which he is a resident.

Article 21

Other income

1) Items of income beneficially owned by a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

2) Notwithstanding the provisions of paragraph 1, the following provisions shall apply with respect to income paid out of trusts or the estates of deceased persons in the course of administration:

Where such income is paid to a beneficiary who is a resident of Germany by trustees or personal representatives who are residents of the United Kingdom out of income received by those trustees or personal representatives which would, if those trustees or personal representatives had been residents of Germany, have fallen within other Articles of this Convention, the beneficiary shall be treated as having received an amount of the income received by the trustees or personal representatives corresponding to the income received by him and any tax paid by the trustees or personal representatives on that amount shall be treated as having been paid by the beneficiary.

3) The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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 shall apply.

4) Where, by reason of a special relationship between the person referred to in

paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in paragraph 1 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 a 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) No relief shall be available under this Article 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.

Article 22

Capital

1) Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

2) Capital represented by 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 may be taxed in that other State.

3) Capital represented by ships and aircraft operated in international traffic, and by movable property pertaining to the operation of such ships and aircraft, shall be taxable only in the Contracting State in which the profits are taxable in accordance with Article 8.

4) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

Article 23

Elimination of double taxation

1) Tax shall be determined in the case of a resident of Germany as follows:

- a) There shall be exempted from the assessment basis of the German tax any item of income arising in the United Kingdom and any item of capital situated within the United Kingdom which, according to this Convention, is effectively taxed in the United Kingdom and is not dealt with in subparagraph b).

In the case of items of income from dividends the preceding provision shall apply only to such dividends as are paid to a company (not including partnerships) being a resident of Germany by a company being a resident of the United Kingdom at least 10 per cent of the capital of which is owned directly by the German company and which were not deducted when determining the profits of the company distributing these dividends.

There shall be exempted from the assessment basis of the taxes on capital any shareholding the dividends of which if paid, would be exempted, according to the foregoing sentences

- b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against German tax payable in respect of the following items of income the United Kingdom tax paid under the laws of the

United Kingdom and in accordance with this Convention:

- aa) dividends not dealt with in sub paragraph a);
 - bb) items of income that may be taxed in the United Kingdom according to paragraph 2 of Article 13 (Capital gains);
 - cc) directors' fees;
 - dd) items of income that may be taxed in the United Kingdom according to Article 16 (Artistes and Sportsmen).
- c) The provisions of sub-paragraph b) shall apply instead of the provisions of sub-paragraph a) to items of income as defined in Articles 7 and 10 and to the assets from which such income is derived if the resident of Germany does not prove that the gross income of the permanent establishment in the business year in which the profit has been realised or of the company resident in the United Kingdom in the business year for which the dividends were paid was derived exclusively or almost exclusively from activities within the meaning of paragraph 1 of section 8 of the German Law on External Tax Relations ("Außensteuergesetz"); the same shall apply to immovable property used by a permanent establishment and to income from this immovable property of the permanent establishment (paragraph 4 of Article 6) and to profits from the alienation of such immovable property (paragraph 1 of Article 13) and of the movable property forming part of the business property of the permanent establishment (paragraph 3 of Article 13).
- d) Germany, however, retains the right to take into account in the determination of its rate of tax the items of income and capital which are under the provisions of this Convention exempted from German tax.
- e) Notwithstanding the provisions of sub-paragraph a) double taxation shall be avoided by allowing a tax credit as laid down in sub-paragraph b)
- aa) if in the Contracting States items of income or capital are placed under different provisions of this Convention or attributed to different persons (except pursuant to Article 9) and this conflict cannot be settled by a procedure in accordance with paragraph 3 of Article 26 and if as a result of this difference in placement or attribution the relevant income or capital would remain untaxed or be taxed lower than without this conflict or
 - bb) if after due consultation with the competent authority of the United Kingdom, Germany notifies the United Kingdom through diplomatic channels of other items of income to which it intends to apply the provisions of sub-paragraph b): Double taxation is then avoided for the notified income by allowing a tax credit from the first day of the calendar year following that in which the notification was made.
- 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) German tax payable under the laws of Germany and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable

gains from sources within Germany (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the German tax is computed;

- b) in the case of a dividend paid by a company which is a resident of Germany 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 German tax for which credit may be allowed under the provisions of subparagraph a)) the German tax payable by the company in respect of the profits out of which such dividend is paid.

3) For the purposes of paragraph 2, profits, income and capital gains owned by a resident of the United Kingdom which may be taxed in Germany in accordance with this Convention shall be deemed to arise from sources in Germany.

Article 24

Limitation of relief

Where under any provision of this Convention any income or gains are 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 those gains, 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 gains as is taxed in the other 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, in particular with respect to residence, are or may be subjected.

2) Stateless persons who are residents of a Contracting State shall not be subjected in either 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 the State concerned in the same circumstances are or may be subjected.

3) 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.

4) Except where the provisions of paragraph 1 of Article 9, paragraph 4 or 5 of Article 11, paragraph 4 or 5 of Article 12, or paragraph 4 or 5 of Article 21 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be

deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.

5) 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.

6) 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.

7) 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 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 25, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention, or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States, except such limitations as apply for the purposes of giving effect to such an agreement.

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. They may also consult together for the elimination of double taxation in cases not provided for in 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.

5) Where,

a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and

b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so

requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

Article 27

Exchange of information

1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Articles 1 and 2.

2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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. Notwithstanding the foregoing provisions, the information may be used for other purposes if under the law of both States it may be used for these other purposes and the competent authority of the supplying State has agreed to this use.

3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which 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 (ordre public).

4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 28

Assistance in the collection of taxes

1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2) The term “revenue claim” as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, a “Land” or of a political subdivision or local authority of a “Land” or a Contracting State, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied, the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

5) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not, in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

7) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be:

- a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, or
- b) in the case of a request under paragraph 4, a revenue claim of the first-

mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection,

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first-mentioned State shall either suspend or withdraw its request.

8) In no case shall the provisions 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 administrative practice of that or of the other Contracting State;
- b) to carry out measures which would be contrary to public policy (ordre public);
- c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;
- d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;
- e) to provide assistance if that State considers that the taxes with respect to which assistance is requested are imposed contrary to generally accepted taxation principles.

Article 29

Procedural rules for taxation at source

1) If in one of the Contracting States the taxes on dividends, interest, royalties or other items of income derived by a person who is a resident of the other Contracting State are levied by withholding at source, the right of the first-mentioned State to apply the withholding of tax at the rate provided under its domestic law shall not be affected by the provisions of this Convention. The tax withheld at source shall be refunded on application by the taxpayer if and to the extent that it is reduced or eliminated by this Convention.

2) Refund applications must be submitted by the end of the fourth year following the tax year in which the withholding tax was applied to the dividends, interest, royalties or other items of income.

3) Notwithstanding paragraph 1, each Contracting State may provide for procedures to the effect that payments of income subject under this Convention to no tax or only to reduced tax in the state of source may be made without deduction of tax or with deduction of tax only at the rate provided in the relevant Article.

4) The Contracting State in which the items of income arise may ask for an administrative certification by the other Contracting State that the taxpayer is a resident of that other Contracting State within the provisions of Article 4.

5) The competent authorities may by mutual agreement implement the provisions of this Article and if necessary establish other procedures for the implementation of tax reductions or exemptions provided for under this Convention.

Article 30

Members of diplomatic missions and consular posts

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

Article 31

Protocol

The attached Protocol shall be an integral part of this Convention.

Article 32

Entry into force

- 1) This Convention shall be ratified; instruments of ratification shall be exchanged as soon as possible in Berlin.
- 2) The Convention shall enter into force on the day of the exchange of the instruments of ratification and shall have effect:
 - a) in the United Kingdom:
 - aa) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the Convention enters into force;
 - bb) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the Convention enters into force;
 - cc) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following that in which the Convention enters into force.
 - b) in Germany:
 - aa) in the case of taxes withheld at source, in respect of amounts paid on or after 1 January of the calendar year next following that in which the Convention enters into force;
 - bb) in the case of other taxes, in respect of taxes levied for periods beginning on or after 1 January of the calendar year next following that in which the Convention enters into force;
- 3) The Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany signed at Bonn on 26 November 1964 as amended by the Protocol signed at London on 23 March 1970 (hereinafter referred to as the 1964 Convention) shall expire and cease to be effective from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph 2.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Double Taxation Relief and International Tax Enforcement (Federal Republic of Germany) Order 2010 No. 2975

4) Notwithstanding the provisions of paragraphs 2 and 3 an individual who is entitled to the benefits of Article XIII of the 1964 Convention at the time of entry into force of this Convention shall continue to be entitled to such benefits as if the 1964 Convention had remained in force.

5) Notwithstanding the provisions of paragraphs 2 and 3 and the provisions of Article 17, where, immediately before the entry into force of this Convention, an individual was in receipt of payments falling within Article X of the 1964 Convention, that individual may elect that the provisions of Article X shall continue to apply to those payments, and not the provisions of Article 17.

Article 33

Termination

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

- a) in the United Kingdom:
 - aa) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given;
 - bb) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;
 - cc) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following that in which the notice is given.
- b) in Germany:
 - aa) in the case of taxes withheld at source, in respect of amounts paid on or after 1 January of the calendar year next following that in which notice of termination is given;
 - bb) in the case of other taxes, in respect of taxes levied for periods beginning on or after 1 January of the calendar year next following that in which notice of termination is given;

Notice of termination shall be regarded as having been given by a Contracting State on the date of receipt of such notice by the other Contracting State.

DONE in duplicate at London on 30 March 2010 in the English and German languages, both texts being equally authoritative.

For the United Kingdom of
Great Britain and Northern
Ireland

Stephen Timms

For the Federal Republic of
Germany

Georg Boomgarden

PART 2

Protocol

to the Convention

between

The United Kingdom of Great Britain and Northern Ireland

and

The Federal Republic of Germany

for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with

respect to Taxes on Income and on Capital

signed on 30 March 2010, London

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany have in addition to the Convention of 30 March 2010, London for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital agreed on the following provisions, which shall form an integral part of the said Convention:

1. With reference to Article 10 (Dividends):

The term “pension scheme” means:

- a) in the case of the United Kingdom, pension schemes (other than a social security scheme) registered under Part 4 of the Finance Act 2004, including pension funds or pension schemes arranged through insurance companies and unit trusts where the unit holders are exclusively pension schemes.
- b) in the case of Germany, an “Altersvorsorgeeinrichtung” that is established and regulated as such under the laws of Germany;

The competent authorities may agree to include in the above, pension schemes of identical or substantially similar economic or legal nature which are introduced by way of statute or legislation in either State after the date of signature of the Convention.

2. With reference to Articles 10 (Dividends) and 11 (Interest):

Notwithstanding the provisions of Articles 10 and 11 of this Convention, dividends and interest may be taxed in the Contracting States in which they arise, and according to the law of that State,

- a) if they are derived from rights or debt-claims carrying a right to participate in profits, including income derived by a silent partner (“stiller Gesellschafter”) from his participation as such, or from a loan with an interest rate linked to borrower’s profit (“partiarisches Darlehen”) or from profit sharing bonds (“Gewinnobligationen”) within the meaning of the tax law of Germany and

- b) under the condition that they are deductible in the determination of profits of the debtor of such income.

3. With reference to Articles 10 (Dividends), 11 (Interest) and 12 (Royalties):

Where an enterprise of Germany derives income from the United Kingdom, and that income is attributable to a permanent establishment which that enterprise has in a third jurisdiction, the tax benefits that would otherwise apply under the other provisions of the Convention will not apply to that income if the combined tax that is actually paid with respect to such income in Germany and in the third jurisdiction is less than 60 per cent of the tax that would have been payable in Germany if the income were earned in Germany by the enterprise and were not attributable to the permanent establishment in the third jurisdiction. Any dividends, interest or royalties to which the provisions of this paragraph apply shall be subject to tax at a rate that shall not exceed 15 per cent of the gross amount thereof. Any other income to which the provisions of this paragraph apply will be subject to tax under the provisions of the domestic law of the United Kingdom, notwithstanding any other provision of the Convention. The provisions of this paragraph shall not apply if:

- a) in the case of royalties, the royalties are received as compensation for the use of, or the right to use, intangible property produced or developed by the permanent establishment itself; or
- b) in the case of any other income, the income derived from the United Kingdom is derived in connection with, or is incidental to, the active conduct of a trade or business carried on by the permanent establishment in the third jurisdiction (other than the business of making, managing or simply holding investments for the person's own account, unless these activities are banking or securities activities carried on by a bank or registered securities dealer).

4. With reference to Article 27 (Exchange of information):

If personal data are exchanged under the Convention, the following additional provisions shall apply:

- a) A competent authority which receives information under the provisions of Article 27 shall, on request, inform the competent authority of the other Contracting State about the way in which that information was used and the results which were achieved.
- b) A competent authority which supplies information under the provisions of Article 27 shall take all steps to ensure that the information is accurate, and that it is necessary for and commensurate with the purposes for which it is supplied. If a competent authority discovers that it has supplied inaccurate information, or information which should not have been supplied under the provisions of the Article, it shall inform the competent authority of the other Contracting State of this without delay. The competent authority shall correct or delete that information, as appropriate.
- c) Upon application the person concerned shall be informed of the exchanged information in respect of him and of the use to which such information is to be put. There shall be no obligation to furnish this information if on balance it turns out that there is an overriding public interest in withholding it. In all other respects, the right of the person concerned to be informed of the existing data relating to him shall be governed by the domestic law of the Contracting State in whose sovereign territory the application for the information is made.
- d) Information exchanged under the provisions of the Article shall in any case be

deleted as soon as it is no longer required for the purposes for which it was supplied.

- e) The competent authorities shall keep records of the supply and receipt of information exchanged under the provisions of Article 27.
- f) The Contracting States shall protect information exchanged under the provisions of Article 27 against unauthorized access, alteration or disclosure.

5. With reference to Article 29 (Procedural rules for taxation at source):

Trustees or managers of investment schemes or managing partners of partnerships established in a Contracting State may submit a claim on behalf of the investors in the scheme or partners of the partnership relating to the benefits afforded by the provisions of the Convention to the extent that these investors or partners are entitled to those benefits. The admission of any claim in whole or in part by the other Contracting State may be made subject to such conditions as that other Contracting State thinks proper to impose.

The acceptance of a claim from the trustee, the manager or the managing partner extinguishes the right of the underlying investor or partner to make a claim for the same relief.

DONE in duplicate at London on 30 March 2010 in the English and German languages, both texts being equally authoritative.

For the United Kingdom of
Great Britain and Northern
Ireland

Stephen Timms

For the Federal Republic of
Germany

Georg Boomgarden

PART 3

Joint Declaration

by the United Kingdom of Great Britain and Northern Ireland

and the Federal Republic of Germany

on the Occasion of the Signing on 30th March 2010 in London

of the

Convention between the United Kingdom of Great Britain and Northern Ireland

**and the Federal Republic of Germany for the Avoidance of Double Taxation and the
Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital**

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany on the occasion of the signing on 30th March 2010 in London of the new Convention between the Federal Republic of Germany and 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 and with regard to the improper use of that Convention and to Article 10 (Dividends),

Have reached the following understanding:

1. Improper use of the Convention

Having regard to paragraphs 7 to 12 of the Commentary to Article 1 of the OECD model tax convention, it is understood that this Convention shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance where those provisions are used to challenge arrangements which constitute an abuse of the Convention.

It is further understood that an abuse of the Convention takes place where a main purpose for entering into certain transactions or arrangements is to secure a more favourable tax position and obtaining that more favourable treatment in these circumstances would be contrary to the object and purpose of the relevant provisions of the Convention.

2. Taxation of Pension Schemes

The Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland affirm their willingness to enter into negotiations with the view to adapting Article 10 (Dividends) if Germany lowers the taxation of pension schemes.

This Joint Declaration is signed in duplicate, in the English and German languages.

30th March 2010, London

For the United Kingdom of
Great Britain and Northern Ireland

Stephen Timms

For the Federal Republic of
Germany

Georg Boomgarden

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a convention, protocol and joint declaration (“the Arrangements”) dealing with the avoidance of double taxation and prevention of fiscal evasion between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Germany. This Order brings the Arrangements into effect.

The Arrangements aim to eliminate the double taxation of income and gains in one country and paid to residents of the other country. This is done by allocating the taxing rights that each country has under its domestic law over the same income and gains, and/or by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Arrangements will enter into force on the day of exchange of the instruments of ratification. They shall have effect:

- (a) 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 the date of entry into force;
- (b) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following the date of entry into force;
- (c) in respect of taxes withheld at source, the UK in relation to income derived, and in Germany in relation to amounts paid, on or after 1st January in the calendar year next following the date of entry into force; and
- (d) in respect of other taxes, for periods beginning on or after 1st January in the calendar year next following the date of entry into force.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.