

Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2008 No.

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International Tax Enforcement
(Taxes on Income and Capital) (Saudi Arabia) Order 2008**

Made - - - - *******

At the Court at Buckingham Palace, the ******* day of *******

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 788(10) of the Income and Corporation Taxes Act 1988(1) and section 173(7) of the Finance Act 2006(2) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 788(1) of the Income and Corporation Taxes Act 1988 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 (Taxes on Income and Capital) (Saudi Arabia) Order 2008.

Double taxation arrangements to have effect

2. It is declared that—

(1) 1988 c. 1: section 788 was extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended. The relevant amendments are as follows: Subsection (1) was amended by section 88(1) of the Finance Act 2002 (c. 23). Subsection (10) was substituted by section 176 of the Finance Act 2006 (c. 25).

(2) 2006 c. 25.

- (a) the arrangements specified in the Convention set out in Part 1 of the Schedule to this Order and in the Protocol set out in Part 2 of that Schedule have been made with the Government of the Kingdom of Saudi Arabia with a view to affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character imposed by the laws of the Kingdom of Saudi Arabia;
- (b) those arrangements include provisions with respect to the exchange of information foreseeably relevant to the administration, enforcement or recovery of the taxes, and debts relating to the taxes, covered by the arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
- (c) it is expedient that those arrangements should have effect.

Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SAUDI ARABIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

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

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of tax 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 or of its political subdivisions or local authorities, 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, or on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

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

(a) 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");

(b) in the case of the Kingdom of Saudi Arabia:

(i) the Zakat;

(ii) the income tax including the natural gas investment tax;

(hereinafter referred to as "Saudi tax").

(4) This Convention shall also apply to any identical or substantially similar taxes that are imposed by either Contracting State 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 notify each other of any significant changes that 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 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 sub-soil and their natural resources may be exercised;
 - (b) the term "Kingdom of Saudi Arabia" means the territory of the Kingdom of Saudi Arabia which also includes the area outside the territorial waters, where the Kingdom of Saudi Arabia exercises its sovereign and jurisdictional rights with respect to waters, sea bed, sub-soil and natural resources by virtue of its law and international law;
 - (c) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or the Kingdom of Saudi Arabia, as the context requires;
 - (d) the term "person" includes any individual, any 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 "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;
 - (h) the term "competent authority" means:
 - (i) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;
 - (ii) in the case of the Kingdom of Saudi Arabia, the Ministry of Finance represented by the Minister of Finance or his authorised representative;
 - (i) the term "national" means:
 - (i) in the case of the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in the case of the Kingdom of Saudi Arabia, any individual possessing the nationality of the Kingdom of Saudi Arabia, and any legal person, partnership or association deriving its status as such from the laws in force in the Kingdom of Saudi Arabia.
- (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 laws 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 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 thereof. This term,

however, does not include any person who is liable to tax in that State in respect only of income from sources in that State or capital situated therein.

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

- (a) he shall be deemed to be a resident 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 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 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 Contracting 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 Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

ARTICLE 5

Permanent Establishment

(1) For the purpose 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 but is not limited to:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) any place of extraction of natural resources.

(3) The term "permanent establishment" also includes:

- (a) a building site, a construction, assembly or installation project, or supervisory activities in connection therewith, but only where such site, project or activities continue for a period of more than six months;
- (b) the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, but only where activities of that nature continue (for the same or a connected project) within the country for a period or periods aggregating more than 183 days within any 12-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 for the sole 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 for the sole purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise for the sole purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business for the sole purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business for the sole purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character;
- (g) the sale of goods or merchandise belonging to the enterprise displayed at an occasional temporary fair or exhibition after the closing of the said fair or exhibition.

(5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person - other than an agent of an independent status to whom paragraph (6) of this Article applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts 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) 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 provided for in the laws of the Contracting State in which the property in question is situated. This 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 and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is 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 Contracting State in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise, by way of income from debt-claim with regard to moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of income from debt-claim with regard to moneys lent to the head office of the enterprise or any of its other offices.

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

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

(6) Nothing in this Article shall affect the operation of any law of a Contracting State relating to tax imposed on profits from insurance relating to risks situated in that State with non-residents provided that if the relevant law in force in either Contracting State at the date of signature of this Convention is varied (otherwise than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph as may be appropriate.

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) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

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) 15 per cent of the gross amount of the dividends where qualifying dividends are paid by a property investment vehicle;
- (b) 5 per cent of the gross amount of the dividends in all other cases.

(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 which is subjected to the same taxation treatment as income from shares by the laws of the Contracting State of which the company making the distribution is a resident and also includes any other item which, under the laws of the 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, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 as the case may be of this Convention, shall apply.

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

profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

ARTICLE 11

Income from Debt-Claims

(1) Income from debt-claims 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 "income from debt-claims" as used in this Article means income from government securities, bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and debt-claims of every kind, as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the income from debt-claims, being a resident of a Contracting State, carries on business in the other Contracting State in which the income from debt-claims arises, through a permanent establishment situated therein, or performs in that other state independent personal services from a fixed base situated therein, and the debt-claim in respect of which the income from debt-claims is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or 14 of this Convention as the case may be 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 income from debt-claims exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 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.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment;
- (b) 8 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 or scientific work (including cinematograph films, and films or tapes used for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

(4) The provisions of paragraph (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other state independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be 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 he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

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

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 or of moveable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, 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 by an enterprise of that Contracting State or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that State.

(4) Gains derived by a resident of a Contracting State from the alienation of shares, or comparable interests, 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.

(5) Gains from the alienation of shares other than those mentioned in paragraph (4) of this Article representing a participation of 25 per cent or more in a company which is a resident of a Contracting State may be taxed in that State.

(6) 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.

ARTICLE 14

Independent Personal Services

(1) Income derived by a resident individual of a Contracting State in respect of professional services or any other activities of an independent character shall be taxable only in that State except in the following circumstances, when such income may also be taxed in the other Contracting State:

- (a) If he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities; in that case, only so much of the income as it is attributable to that fixed base may be taxed in that other Contracting State; or
- (b) If his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in any 12 month period commencing or ending in the fiscal year concerned; in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State.

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

ARTICLE 15

Dependent Personal Services

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

(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 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 16

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 17

Artistes and Sportspersons

(1) Notwithstanding the provisions of Articles 14 and 15 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 sportsperson 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 sportsperson in his capacity as such accrues not to the entertainer or sportsperson himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsperson are exercised.

ARTICLE 18

Pensions

Subject to the provisions of paragraph (2) of Article 19 of this Convention pensions and other similar remuneration paid to an individual who is a resident of a Contracting State shall be taxable only in that State.

ARTICLE 19

Government Service

(1) (a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that other 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) (a) Notwithstanding the provisions of paragraph (1) of this Article, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) 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 other State.

(3) The provisions of Articles 15, 16, 17 and 18 of this Convention 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 or a political subdivision or a local authority thereof.

ARTICLE 20

Students

(1) 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 first-mentioned State, provided that such payments arise from sources outside that State.

(2) Remuneration which a student or business trainee who is or was before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting State for the purpose of his education or training derives from services rendered in the first-mentioned Contracting State shall not be taxed in that State unless it exceeds the exemption or allowance provided under the law of that Contracting State.

ARTICLE 21

Teachers and Researchers

(1) An individual who visits one of the Contracting States for the purpose of teaching or engaging in research at a university, college, school or other recognised educational institution in that Contracting State, and who immediately before that visit was a resident of the other Contracting State, shall be exempted from tax by the first-mentioned Contracting State on any remuneration for a period not exceeding two years from the date he first visits that State for such purpose.

(2) The provisions of this Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 22

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Convention 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention as the case may be 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.

ARTICLE 23

Capital

(1) Capital represented by immovable property referred to in Article 6 of this Convention, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other Contracting 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 or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other Contracting State.

(3) Capital represented by ships and aircraft operated by an enterprise of a Contracting State in international traffic and by movable property pertaining to the operation of such ships and aircraft shall be taxable only in that State.

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

ARTICLE 24

Elimination of Double Taxation

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

- (a) Saudi tax payable under the laws of the Kingdom of Saudi Arabia and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Kingdom of Saudi Arabia (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 Saudi tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of the Kingdom of Saudi Arabia 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 Saudi tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Saudi tax payable by the company in respect of the profits out of which such dividend is paid.

- (2) In the case of the Kingdom of Saudi Arabia, double taxation shall be eliminated as follows:
- (a) where a resident of the Kingdom of Saudi Arabia derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, the Kingdom of Saudi Arabia shall allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in the United Kingdom. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the United Kingdom;
 - (b) the methods for elimination of double taxation will not prejudice the provisions of the Zakat collection regime as regards Saudi nationals.
- (3) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

ARTICLE 25

Mutual Agreement Procedure

- (1) Where a resident of a Contracting State considers that the actions of one or both of those 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. The case must be presented within two years from the first notification of the action resulting in taxation not in accordance with the provisions of this 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 this Convention. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations 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 this Convention. They may also consult together for the elimination of double taxation in cases not provided for in this 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) The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Convention and, especially, the requirements to which the residents of a Contracting State shall be subjected in order to obtain, in the other State, the tax reliefs or exemptions provided for by this Convention.

ARTICLE 26

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 of the Contracting States 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 this 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 of this Convention.

(2) Any information received under paragraph (1) of this Article 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) of this Article, 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.

(3) In no case shall the provisions of paragraphs (1) and (2) 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 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.

(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) of this Article 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.

ARTICLE 27

Diplomatic and Consular Officers

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions and their personal domestics, or members of consular missions, or of members of permanent missions to international organisations under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Miscellaneous Provisions

No relief shall be available under this Convention if the main purpose or one of the main purposes of any person concerned with the creation or assignment of any shares, debt claims or other rights in respect of which income arises was to take advantage of this Convention by means of that creation or assignment.

ARTICLE 29

Entry into Force

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

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

- (a) in the case of the United Kingdom:

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 (Taxes on Income and Capital) (Saudi Arabia) Order 2008 No. 1770*

- (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 Convention enters into force;
- (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 Convention enters into force;
- (b) in the case of the Kingdom of Saudi Arabia:
 - (i) in respect of taxes withheld at source, for amounts paid on or after 1st January next following the date upon which the Convention enters into force;
 - (ii) in respect of other taxes, for taxable years beginning on or after 1st January next following the date upon which the Convention enters into force.

ARTICLE 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this 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 this Convention. In such event, this Convention shall cease to have effect:

- (a) in the case of the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (b) in the case of the Kingdom of Saudi Arabia:
 - (i) in respect of taxes withheld at source, for amounts paid on or after the end of the calendar year in which the notice is given;
 - (ii) in respect of other taxes, for taxable years beginning after the end of the calendar year in which the notice is given.

In witness whereof the undersigned, duly authorised thereto, have signed this Convention.

Done in duplicate at London this 31st day of October 2007 in the English and Arabic languages, both texts being equally authoritative.

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

Alistair Darling

For the Government of the Kingdom of Saudi Arabia:

Ibrahim A. Al-Assaf

PART 2

PROTOCOL

At the signing of the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital, the Government of the United Kingdom of Great Britain and Northern Ireland and the

Government of the Kingdom of Saudi Arabia have agreed that the following provisions shall form an integral part of the Convention.

1. *With reference to Article 3 (General Definitions):*

It is understood that

- (a) with respect to sub-paragraph (d) of paragraph (1) of Article 3, the term “person” also includes the State, its political subdivisions or local authorities;
- (b) the term “pension scheme” means any plan, scheme, fund, trust or other arrangement established in a Contracting State which:
 - (i) is generally exempt from income taxation in that State; and
 - (ii) operates principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

2. *With reference to Article 4 (Residence):*

It is understood that the term “resident of a Contracting State” includes

- (a) a pension scheme established in that State; and
- (b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax in that State.

3. *With reference to Article 7 (Business Profits):*

It is understood that

- (a) in the case of contracts for survey, construction, supply or installation, the profits of a permanent establishment shall not be determined on the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the state where the permanent establishment is situated. Any portion of the contract executed outside the Contracting State in which the permanent establishment is situated shall not be taken into consideration in determining the profits of that permanent establishment;
- (b) the term “business profits” includes, but is not limited to, income derived from manufacturing, mercantile, banking, insurance, the operation of inland transportation, the furnishing of services and the rental of tangible personal movable property. Such a term does not include the performance of personal services by an individual either as an employee or in an independent capacity.

4. *With reference to Article 10 (Dividends):*

It is agreed that dividends shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is a pension scheme which is a resident of the other Contracting State;

5. *With reference to paragraph 2(a) of Article 10 (Dividends):*

- (a) the term “property investment vehicle” means a widely held investment vehicle that distributes most of its income - from immovable property within the meaning of Article 6 - on which it is exempt from tax;
- (b) the term “qualifying dividend” means a distribution by a property investment vehicle as referred to in sub-paragraph (a).

6. *With reference to Article 11 (Income from Debt Claims):*

It is understood that the term “income from debt-claims” does not include any item which is treated as a dividend under the provisions of Article 10 of this Convention.

7. *With reference to Article 13 (Capital Gains):*

- (a) shares in which there is substantial and regular trading on a stock exchange are not within the scope of paragraph 4;

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 (Taxes on Income and Capital) (Saudi Arabia) Order 2008 No. 1770*

- (b) it is understood that the provisions of paragraph 6 of Article 13 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, and has been at any time during the previous six fiscal years, a resident of that Contracting State or on a person who is a resident of that Contracting State at any time during the fiscal year in which the property is alienated.

8. *With reference to Article 24 (Elimination of Double Taxation):*

- (a) where gains may be taxed by the United Kingdom in accordance with paragraph 7(b) of this Protocol, the United Kingdom and not the Kingdom of Saudi Arabia shall eliminate double taxation in accordance with the methods set out in paragraph 1 of Article 24 as if the gains arose from sources in the Kingdom of Saudi Arabia. However, where gains may be taxed by the United Kingdom in accordance with paragraphs 1, 2 or 3 of Article 13, the Kingdom of Saudi Arabia and not the United Kingdom shall eliminate double taxation in accordance with the methods set out in paragraph 2 of Article 24.
- (b) For the purpose of the United Kingdom providing relief for Saudi Arabia tax, it is understood that Saudi Arabian nationals resident in the United Kingdom are subject to income tax in the Kingdom of Saudi Arabia on their income from sources therein, therefore such persons will be entitled to credit in the United Kingdom only for income tax payable to the Kingdom of Saudi Arabia on their income from sources therein.

9. *With reference to Article 26 (Exchange of Information):*

It is understood that as long as the domestic laws of both Contracting States so allow, both Contracting States shall exchange information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or information relating to ownership interests in a person.

10. With reference to the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Saudi Arabia for the Avoidance on a Reciprocal Basis of Double Taxation on Revenues Arising from the Business of International Air Transport and on the Remuneration of Employees of Enterprises Engaged in such Business, signed at Riyadh on 10 March 1993, it is understood that nothing in this Convention shall affect the provisions of that Agreement to the extent that they have effect as regards taxes to which this Convention applies. However, where any greater relief for such taxes is afforded by any provision of this Convention, that provision shall apply.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at London this 31st day of October 2007 in the English and Arabic languages, both texts being equally authoritative.

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

Alistair Darling

For the Government of the Kingdom of Saudi Arabia:

Ibrahim A. Al-Assaf

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 the Kingdom of Saudi Arabia (“the Convention”) is set out in the Schedule to this Order.

Article 2 makes a declaration as to the effect and content of arrangements set out in the Convention contained in Part 1 of the Schedule to the Order and in the Protocol contained in Part 2 of that Schedule and that it is expedient that those arrangements should have effect.

A detailed explanation of the Convention can be found in the Explanatory Memorandum published with the Convention and which may be accessed on the web site of the Office of Public Sector Information at <http://www.opsi.gov.uk/stat.htm>

The Convention will enter into force on the first day of the second month following 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 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 Convention enters into force; and

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 Convention enters into force.

It will take effect in the Kingdom of Saudi Arabia—

in respect of taxes withheld at source, for amounts paid on or after 1st January next following the date upon which the Convention enters into force; and

in respect of other taxes, for taxable years beginning on or after 1st January next following the date upon which the Convention enters into force (see Article 29 of the Convention).

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

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.