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 STATUTORY INSTRUMENTS
 

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**1987 No. 2055**

**INCOME TAX**

**The Double Taxation Relief (Taxes on Income)  
(France) (No. 2) Order 1987**

*Made - - - - 26th November 1987*

At the Court at Buckingham Palace, the 26th day of November 1987

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:-

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (France) (No. 2) Order 1987.

2. It is hereby declared-

- (a) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1968(b), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1971(c), by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1973(d) and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1987(e), have been made with the Government of the French Republic with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of France; and
- (b) that it is expedient that those arrangements should have effect.

*G. I. de Deney*  
Clerk of the Privy Council

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(a) 1970 c.10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c.41), section 10 of the Capital Gains Tax Act 1979 (c.14) and section 70 of the Finance Act 1987 (c.16).

(b) S.I. 1968/1869.

(c) S.I. 1971/718.

(d) S.I. 1973/1328.

(e) S.I. 1987/466.

## SCHEDULE

FOURTH PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FRENCH REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT LONDON ON 22 MAY 1968, AS MODIFIED BY THE PROTOCOLS SIGNED AT LONDON ON 10 FEBRUARY 1971, 14 MAY 1973 AND 12 JUNE 1986

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic;

Desiring to amend the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at London on 22 May 1968, as modified by the Protocols signed at London on 10 February 1971, 14 May 1973 and 12 June 1986, (hereinafter referred to as "the Convention");

Have agreed as follows:

## ARTICLE 1

Sub-paragraph (1)(b) of Article 1 of the Convention shall be deleted and replaced by the following:

"(b) in France:

the income tax, the corporation tax, including any withholding tax, prepayment (*précompte*) or advance payment with respect to the aforesaid taxes (hereinafter referred to as "French tax")."

## ARTICLE 2

Paragraph (2) of Article 2 of the Convention shall be deleted and the existing paragraph (3) renumbered paragraph (2).

## ARTICLE 3

Paragraph (1) of Article 3 of the Convention shall be deleted and replaced by the following:

"(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State."

## ARTICLE 4

Article 5 of the Convention shall be deleted and replaced by the following:

## "ARTICLE 5

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture and forestry) situated in the other Contracting State, including income derived from rights attached to such property, may be taxed in that other State.

(2)(a) The term "immovable property" shall, subject to the provisions of sub-paragraphs (b), (c) and (d) below, have the meaning which it has under the law of the Contracting State in which the property in question is situated.

(b) Shares or rights in a company or legal person, the assets of which consist mainly of immovable property situated in one of the Contracting States, shall be treated as immovable property situated in that State. For the purposes of this provision, immovable property pertaining to the industrial, commercial or agricultural operation of such a company or legal person or the performance of independent professional activities shall not be taken into account.

(c) The term “immovable property” 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.

(d) 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 the preceding paragraphs shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent professional activities.”

#### ARTICLE 5

Paragraph (6) of Article 6 of the Convention shall be deleted and replaced by the following new paragraphs (6) and (7):

“(6) In so far as it has been customary in a Contracting State to determine according to its law 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.

(7) 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.”

#### ARTICLE 6

Article 7 of the Convention shall be deleted and replaced by the following:

#### “ARTICLE 7

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

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

#### ARTICLE 7

The following new Article shall be inserted immediately after Article 7 of the Convention:

#### “ARTICLE 7A

(1) In this Article:

(a) the term “Treaty” means the Treaty between the United Kingdom of Great Britain and Northern Ireland and the French Republic concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link signed at Canterbury on 12 February 1986;

(b) the term “Fixed Link” has the meaning given by paragraph (2) of Article 1 of the Treaty;

(c) the term “Concession” means the Concession Agreement concerning the development, financing, construction and operation of a fixed link across the English Channel signed at Paris on 14 March 1986 between the Secretary of State for Transport in the Government of the United Kingdom of Great Britain and Northern Ireland and Le Ministre de l’Urbanisme, du Logement et des Transports representing the French State of the one part, and The Channel Tunnel Group Limited and France-Manche SA of the other part;

- (d) the term “Concessionaire(s)” means The Channel Tunnel Group Limited and France-Manche SA or any transferee or successor permitted in accordance with the Concession;
- (e) the term “holding companies” means:
  - (i) the company which is a resident of the United Kingdom and beneficially owns all the issued share capital of the Concessionaire which is an enterprise of the United Kingdom; and
  - (ii) the company which is a resident of France and holds all the issued share capital of the Concessionaire which is an enterprise of France, with the exception of shares held compulsorily by other shareholders in accordance with French commercial law; and
- (f) the term “associated company” means:
  - (i) either of the holding companies; or
  - (ii) a company in which one of the Concessionaires owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital; or
  - (iii) a company in which one of the holding companies owns directly or indirectly more than 50 per cent either of the voting power or of the ordinary share capital;
 

and for this purpose “ordinary share capital” means:

    - (iv) in the United Kingdom all the issued share capital in the company, other than share capital the holders of which have a right to a dividend at a fixed rate but have no other right to share in the profits of the company;
    - (v) in France all the issued share capital in the company the holders of which have no special right to a dividend nor a special voting right.

(2) The provisions of this Article shall apply for the purposes of the taxation by the Contracting States of profits derived from the construction and operation of the Fixed Link, notwithstanding anything to the contrary in Article 6, so long as:

- (a) one of the Concessionaires is an enterprise of one Contracting State and the other Concessionaire is an enterprise of the other Contracting State; and
- (b) the Concession provides for the application by the Concessionaires of the principle of equal sharing of costs and revenues between the two Concessionaires; and
- (c) the Concessionaires share such costs and revenues equally during the construction and operation of the Fixed Link.

(3) The Contracting States shall for the purposes of their taxation laws compute the profits of each of the Concessionaires separately (whether or not any partnership exists between them) on the basis that the costs and revenues which are shared between them in accordance with paragraph (2)(c) have been respectively incurred and received by each of them in equal shares.

(4) If and so long as the holders of shares in one of the Concessionaires, or in one of the holding companies, are required simultaneously to hold an equivalent number of shares of the same description in the other Concessionaire or, as the case may be, the other holding company, the profits of each of the Concessionaires computed in accordance with paragraph (3) shall be taxable only in the Contracting State of which it is an enterprise.

(5) If at any time the requirements of paragraph (4) are not satisfied, the profits of each of the Concessionaires computed in accordance with paragraph (3) shall be attributable as to one half thereof to a permanent establishment which the Concessionaire has in the Contracting State of which it is not an enterprise and shall be taxable in that Contracting State accordingly.

- (6)(a) Notwithstanding the provisions of Article 15, salaries, wages and other similar remuneration received by an employee of one of the Concessionaires or an associated company in respect of an employment which is exercised within the Fixed Link in both Contracting States may be taxed in the Contracting State in which the place of effective management of that Concessionaire or associated company is situated.
- (b) For the purposes of paragraph (2) of Article 15, remuneration shall not be regarded as borne by a permanent establishment which a Concessionaire has in the Contracting State of which it is not an enterprise by reason only that a partnership exists between the two Concessionaires.”

## ARTICLE 8

Article 9 of the Convention shall be deleted and replaced by the following:

## "ARTICLE 9

## A – DIVIDENDS PAID BY COMPANIES WHICH ARE RESIDENTS OF THE UNITED KINGDOM

- (1)(a) Dividends paid by a company which is a resident of the United Kingdom to a resident of France may be taxed in France.
- (b) Where a resident of France is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article tax may also be charged in the United Kingdom, and according to the law of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
- (c) Except as provided in sub-paragraph (b) of this paragraph, dividends which are paid by a company which is a resident of the United Kingdom to a resident of France who is the beneficial owner of those dividends shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of France who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraphs (3), (4) and (5) of this Article and provided that he is the beneficial owner of those dividends, and subject to tax in France in respect of those dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.

(3) For the purposes of paragraph (2) of this Article, if the beneficial owner of the dividends is a pension fund (*caisse de retraite*) which is a resident of France and which has been approved for tax purposes by France, the pension fund (*caisse de retraite*) shall be deemed to be subject to tax in France in respect of those dividends.

(4) The provisions of paragraph (2) of this Article shall not apply where the recipient of the dividends is a company which controls the company paying those dividends.

(5) If the beneficial owner of the dividends is a company which owns 10 per cent or more of the class of shares in respect of which the dividends are paid then paragraph (2) of this Article shall not apply to the dividends to the extent that they can have been paid only out of income which accrued to the company paying the dividends in a period ending 12 months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares in question.

Provided that this paragraph shall not apply if the shares were acquired for *bona fide* commercial reasons and not primarily for the purposes of securing the benefit of this Article.

## B – DIVIDENDS PAID BY COMPANIES WHICH ARE RESIDENTS OF FRANCE

(6) Dividends paid by a company which is a resident of France to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in France but where such dividends are beneficially owned by a resident of the United Kingdom 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 which controls the company paying those dividends;
- (b) in all other cases 15 per cent of the gross amount of the dividends.

(7)(a) A resident of the United Kingdom who receives from a company which is a resident of France dividends which, if received by a resident of France, would entitle such resident to a fiscal credit (*avoir fiscal*), shall be entitled to a payment from the French Treasury equal to such credit (*avoir fiscal*) subject to the deduction of the tax provided for in sub-paragraph (b) of paragraph (6) of this Article.

- (b) The provision of sub-paragraph (a) of this paragraph shall apply only to a resident of the United Kingdom, being either:
  - (i) an individual; or
  - (ii) a company or a pension fund approved for tax purposes by the United Kingdom which:

- (aa) does not control the company paying the dividends referred to in sub-paragraph (a) of this paragraph; and
- (bb) is not entitled in computing the amount of credit to be allowed against United Kingdom tax in respect of tax payable in a territory outside the United Kingdom to take into account the French tax payable on the profits out of which the said dividends are paid.
- (c) The provisions of sub-paragraph (a) of this paragraph shall not apply if the recipient of the dividends, being other than a pension fund referred to in sub-paragraph (b)(ii) of this paragraph, is not subject to United Kingdom tax in respect of those dividends.
- (d) Payments from the French Treasury provided for under sub-paragraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Convention.
- (8)(a) Where the prepayment (*précompte*) is levied in respect of dividends paid by a company which is a resident of France to a resident of the United Kingdom who is not entitled to the payment from the French Treasury referred to in paragraph (7) of this Article with respect to such dividends, that resident of the United Kingdom shall be entitled to the refund of the prepayment, subject to the deduction of tax with respect to the refunded amount in accordance with paragraph (6) of this Article.
- (b) Amounts refunded under the provisions of sub-paragraph (a) of this paragraph shall be deemed to be dividends for the purposes of this Convention.

#### C – GENERAL

(9) The provisions of paragraphs (1), (2), (6) and (7) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting State of which the company paying the dividends is a resident, a permanent establishment or performs in that other State independent professional activities 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 Articles 6 or 14 of this Convention, as the case may be, shall apply.

(10) The term “dividends” as used in this Article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income treated as a distribution by the taxation law of the State of which the company making the distribution is a resident.

(11) For the purposes of this Article, a company shall be deemed to control another company when either alone or together with one or more associated companies it controls directly or indirectly at least 10 per cent of the voting power in that other company, and two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.”

#### ARTICLE 9

Article 10 of the Convention shall be deleted.

#### ARTICLE 10

Article 11 of the Convention shall be deleted and replaced by the following:

#### “ARTICLE 11

(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if that resident is the beneficial owner of the interest.

(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. The term “interest” shall not include any item which is treated as a distribution under the provisions of Article 9.

(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, or performs in that other State independent professional activities from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent

establishment or fixed base. In such case the provisions of Articles 6 or 14 of this Convention, as the case may be, shall apply.

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

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

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

(7) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purposes of taking advantage of this Article and not for *bona fide* commercial reasons.”

#### ARTICLE 11

Article 12 of the Convention shall be deleted and replaced by the following:

#### “ARTICLE 12

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State if that resident is the beneficial owner of the royalties.

(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 and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience and shall include gains derived from the sale or exchange of any rights or property giving rise to such royalties.

(3) The provisions of paragraph (1) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State in which the royalties arise a permanent establishment, or performs in that other State independent professional activities from a fixed base situated therein, and the rights or property giving rise to the royalties is effectively connected with such permanent establishment or fixed base. In such case the provisions of Articles 6 or 14, 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 royalties paid exceeds 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) The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purposes of taking advantage of this Article and not for *bona fide* commercial reasons.”

## ARTICLE 12

Article 13 of the Convention shall be deleted and replaced by the following:

## “ARTICLE 13

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in paragraph (2) of Article 5, which is situated in the other State may be taxed in that other State. For the purposes of this provision the second sentence of paragraph (2)(b) of Article 5 shall not apply.

(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 movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purposes of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State. However, gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

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

(4) Notwithstanding the provisions of paragraph (3), gains derived by an individual who is a resident of a Contracting State from the alienation of more than 25 per cent of the shares held, alone or together with related persons, directly or indirectly, in a company which is a resident of the other Contracting State may be taxed in that other State. The provisions of this paragraph shall only apply if:

- (a) the individual is a national of the other Contracting State without also being a national of the first-mentioned Contracting State; and
- (b) the individual has been a resident of the other Contracting State at any time in a five year period immediately preceding the alienation of the shares.

The provisions of this paragraph shall also apply to gains from the alienation of other rights in such company which, for the purpose of capital gains taxation, are subjected to the same treatment as gains from the alienation of shares by the laws of that other Contracting State.”

## ARTICLE 13

Sub-paragraph (2)(a) of Article 15 of the Convention shall be deleted and replaced by the following:

“(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any period of 12 months; and”

## ARTICLE 14

Article 22 of the Convention shall be deleted and replaced by the following:

## “ARTICLE 22

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

(2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property as referred to in Article 5, if the beneficial owner 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 professional activities 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 Articles 6 or 14, as the case may be, shall apply.”

## ARTICLE 15

Paragraph (b) of Article 24 of the Convention shall be deleted and replaced by the following:

“(b) In the case of France:

- (i) income other than that mentioned in sub-paragraph (ii) below shall be exempt from the French taxes mentioned in paragraph (1) of Article 1 while the income is, under



- the Convention, taxable in the United Kingdom;
- (ii) as regards income mentioned in Articles 9 and 17 which has borne United Kingdom tax in accordance with the provisions of these Articles, France shall allow to a resident of France receiving such income from the United Kingdom a tax credit corresponding to the amount of tax levied in the United Kingdom. Such tax credit, not exceeding the amount of French tax levied on such income, shall be allowed against taxes mentioned in sub-paragraph (1)(b) of Article 1 of this Convention, in the bases of which such income is included;
  - (iii) notwithstanding the provisions of sub-paragraphs (i) and (ii) French tax may be computed on income chargeable in France by virtue of this Convention at the rate appropriate to the total of the income chargeable in accordance with French law."

#### ARTICLE 16

Article 25 of the Convention shall be amended by deleting the existing paragraphs numbered (2) and (6) and by adding new paragraphs numbered (2), (6) and (8) as follows:

"(2) The term "national" means:

- (a) 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;
- (b) in relation to France:
  - (i) all individuals who have French nationality;
  - (ii) all legal persons, associations and other entities deriving their status as such from the law in force in France.

(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 and reliefs for tax purposes which are granted to individuals so resident.

(8) Payments made by an individual who is a resident of a Contracting State, to a pension scheme established in the other Contracting State may be relieved from tax in the first-mentioned Contracting State provided that:

- (a) the individual was contributing to the pension scheme before he became a resident of the first-mentioned State; and
- (b) the pension scheme is accepted by the competent authority of that State as corresponding to a pension scheme recognised as such for tax purposes by that State.

In such case relief from tax shall be given in the same way as if the pension scheme was recognised as such by that State and payments to the pension scheme by the enterprise paying his remuneration shall not be deemed to be taxable income of the individual."

#### ARTICLE 17

(1) Each of the Contracting States shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol.

(2) This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom, for any year of assessment, financial year or chargeable period beginning on or after 1 April in the calendar year next following that in which this Protocol enters into force;
- (b) in France:
  - (i) in respect of taxes withheld at source, to amounts paid or credited on or after 1 January in the calendar year next following that in which this Protocol enters into force;
  - (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following that in which this Protocol enters into force.

(3) Notwithstanding the provisions of paragraph (2) of this Article, Article 10 of this Protocol shall have effect with respect to amounts paid or credited on or after 1 January 1988 or on or after the first day of the first month next following the date on which this Protocol enters into force, whichever is the later.

#### ARTICLE 18

This Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at London this 15th day of October 1987 in the English and French languages, both texts being equally authoritative.

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

*Lynda Chalker*

*Luc de la Barre de Nanteuil*

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### EXPLANATORY NOTE

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

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (France) Order 1968, as amended by three subsequent Protocols.

The Protocol generally adopts the criterion of beneficial ownership for obtaining relief under the Convention although, with the exception of pension funds approved for tax purposes, subject to tax also remains a condition for the purposes of Article 9 (dividends) of the Convention.

A revised definition of immovable property is included for the purpose of applying the provisions of Articles 5 (immovable property) and 13 (capital gains) of the Convention. The Protocol introduces an additional provision to permit, subject to certain conditions, gains derived by a resident of one country from the sale of more than 25 per cent of the shares in a company resident in the other country to be taxed in that other country.

The Protocol deletes Article 10 of the Convention which allowed a separate tax to be imposed upon permanent establishments and amends Article 11 of the Convention so that interest is taxable only in the country of residence of the recipient.

The 183 day rule in Article 15 (employments) of the Convention is amended so that it applies to a 12 month period instead of a fiscal year. The Protocol also provides, subject to certain conditions, for the deductibility of contributions by a resident of one country to a pension fund in the other country.

The Protocol makes provision (in Article 7A of the Convention) for the taxation of the profits of the Concessionaires of the Channel Fixed Link and the taxation of the remuneration of employees of the Concessionaires who work in both countries or in the country of which the employing Concessionaire is not a resident.

The Protocol is generally to take effect in the United Kingdom on or after 1st April in the calendar year following that in which it enters into force. But the new provisions for interest will take effect on 1st January 1988 or the first day of the first month following the entry into force date, whichever is the later.