STATUTORY INSTRUMENTS

1980 No. 708

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Bangladesh) Order 1980

Laid before the House of Commons in draft

Made - - - - - 21st May 1980

At the Court at Buckingham Palace, the 21st day of May 1980

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) (Bangladesh) Order 1980.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the People's Republic of Bangladesh 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 Bangladesh; and

(*b*) that it is expedient that those arrangements should have effect.

N. E. Leigh,
Clerk of the Privy Council.

Clerk of the Privy Council.

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

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF BANGLADESH FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the People's Republic of Bangladesh;

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

Have agreed as follows:—

ARTICLE 1

Personal scope

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

ARTICLE 2

Taxes covered

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

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

(i) the income tax;

(ii) the corporation tax; and

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

(*b*) in the People's Republic of Bangladesh:

(i) the income-tax; and

(ii) the super-tax;
(hereinafter referred to as "Bangladesh tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

(3) The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

General definitions

(1) In this Convention, unless the context otherwise requires:

(*a*) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United

Kingdom which under the laws of the United Kingdom is an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised;

(*b*) the term "Bangladesh" means the territory of the People's Republic of Bangladesh, including any area outside the territorial waters of Bangladesh which under the laws of Bangladesh is an area within which the rights of Bangladesh with respect to the sea bed and subsoil and their natural resources may be exercised;

(*c*) the term "national" means:

(i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided that in either case he has the right of abode in the United Kingdom; and includes any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Bangladesh, any individual possessing the nationality of Bangladesh and includes any legal person, partnership, association or other entity deriving its status as such from the law in force in Bangladesh;

(*d*) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Bangladesh, as the context requires;

(*e*) the term "person" comprises an individual, a company and any other body of persons;

(*f*) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*g*) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*h*) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Bangladesh the National Board of Revenue or its authorised representative;

(*i*) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated wholly or mainly between places in the other Contracting State;

(*j*) the term "political subdivision", in relation to the United Kingdom, includes Northern Ireland.

(2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Fiscal domicile

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State in respect only of income from sources 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 of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);

(*b*) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(*c*) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(*d*) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

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

ARTICLE 5

Permanent establishment

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a warehouse, in relation to a person providing storage facilities for others;

(*g*) a mine, oil well, quarry or other place of extraction of natural resources;

(*h*) a building site or construction or assembly project which exists for more than 183 days.

(3) The term "permanent establishment" shall not be deemed to include:

(*a*) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom paragraph (5) of this Article applies—shall be deemed to be a permanent establishment in the first-mentioned State but only if:

(*a*) he has, and habitually exercises, in the first-mentioned State, a general authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise, or

(*b*) he habitually maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders or makes deliveries on behalf of the enterprise, or

(*c*) he habitually secures orders for the sale of goods or merchandise in the first-mentioned State, wholly or almost wholly on behalf of the enterprise itself, or on behalf of the enterprise and other enterprises controlled by it or which have a controlling interest in it.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such person is acting in the ordinary course of his business and his activities are not as described in sub-paragraph (*c*) of paragraph (4) of this Article.

(6) 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 from immovable property may be taxed in the Contracting State in which such property is situated.

(2) (*a*) The term "immovable property" shall, subject to the provisions of sub-paragraph (*b*) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.

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

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

(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 professional 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 at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise shown to have been incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

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

(5) Where profits include items 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) For the purposes of this Article the term "profits" does not include income from the operation of ships.

ARTICLE 8

Air transport

(1) Profits from the operation of aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) The provisions of paragraph (1) of this Article shall likewise apply in respect of income derived from participation in pools of any kind by enterprises engaged in air transport.

(3) For the purposes of paragraph (1) of this Article, interest on funds directly connected with the operation of aircraft in international traffic shall be regarded as income from the operation of such aircraft, and the provisions of Article 11 shall not apply to such interest.

ARTICLE 9

Associated enterprises

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.

ARTICLE 10

Dividends

(1) Dividends derived from a company which is a resident of a Contracting State by 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 law of that State, but the tax so charged shall not exceed:—

(*a*) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;

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

(3) The term "dividend" as used in this Article means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from corporate rights assimilated to income from shares by the taxation law of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article 11 of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) or (2) of this Article shall not apply where the beneficial owner of the dividends, being a resident of one of the Contracting States, has in the other Contracting State a permanent establishment or performs in that other State professional services from a fixed base situated therein and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment or fixed base. In such a case the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

ARTICLE 11

Interest

(1) Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

(2) Such interest may also be taxed in the Contracting State in which it arises, and according to the law of that State; but where the interest is paid to a resident of the other Contracting State who is subject to tax in that other State in respect of it, the tax so charged in the State in which the interest arises shall not exceed:

(*a*) $7\frac{1}{2}$ per cent of the gross amount of the interest, if the interest is derived by a bank or any other financial institution (including an insurance company) which is a resident of the other State;

(*b*) 10 per cent of the gross amount of the interest, in all other cases.

(3) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other 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; it does not include interest which is treated as a distribution under United Kingdom law.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of the 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 professional services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

(7) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or any agency or instrumentality wholly owned by that Government.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State which are derived and beneficially owned by 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 law of that State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any

copyright of literary, artistic or scientific work (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 but does not include any payment in respect of the operation of mines, quarries or other places for extraction of natural resources.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State professional 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 a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

(5) Royalties shall be deemed to arise in a Contracting State where the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties was incurred and the royalties are borne by that permanent establishment, then the royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(6) Where, owing to 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 paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In this case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, or from the alienation of shares in a company the assets of which consist principally of such property, may be taxed in the Contracting State in which such property is situated.

(2) Capital 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 purpose 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.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital 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.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) 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 of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State, unless:

(*a*) 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 is attributable to that fixed base may be taxed in that other Contracting State; or

(*b*) his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 120 days in the fiscal year.

(2) The term "professional services" includes especially 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 17, 18, 19 and 20 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 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 or a fixed base which the employer has in the other State.

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

ARTICLE 16

Artistes and athletes

(1) Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

(2) Where income in respect of personal activities as such of an entertainer accrues not to the entertainer himself but to another person that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer are exercised.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to services of entertainers and athletes if their visit to a Contracting State is supported wholly or substantially from public funds of the other Contracting State.

ARTICLE 17

Pensions

(1) Subject to the provisions of paragraphs (1) and (2) of Article 18 pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 18

Governmental functions

(1) Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom in the discharge of functions of a governmental nature, shall be taxable only in the United Kingdom unless the individual is a Bangladesh national without also being a United Kingdom national.

(2) Remuneration or pensions paid by, or out of funds created by, Bangladesh or a local authority thereof to any individual in respect of services

rendered to the Government of Bangladesh or a local authority thereof, in the discharge of functions of a governmental nature, shall be taxable only in Bangladesh unless the individual is a United Kingdom national without also being a Bangladesh national.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 19

Students

(1) An individual who is a resident of one of the Contracting States at the time he becomes temporarily present in the other Contracting State and who is temporarily present in the other Contracting State solely for the purpose of:

(*a*) studying in the other Contracting State at a university or other recognised educational institution; or

(*b*) securing training at a recognised educational institution required to qualify him to practice a profession; or

(*c*) studying or carrying out research as a recipient of a grant, allowance or award from a governmental, religious, charitable, scientific, literary or educational organisation;

shall be exempt from tax in that other Contracting State on:

(i) remittances from abroad for the purpose of his maintenance, education, study, research or training;

(ii) the grant, allowance or award; and

(iii) income from personal services rendered in the other Contracting State (other than any rendered by an articled clerk or other individual undergoing professional training to the person or partnership to whom he is articled or who is providing the training) provided that the income constitutes earnings reasonably necessary for his maintenance and education.

(2) In no event shall an individual have the benefit of the provisions of this Article for more than five years.

ARTICLE 20

Teachers

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

(2) This Article shall not apply to income from research unless 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 21

Miscellaneous provisions

(1) Where under any provision of this Convention income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State, and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income as is remitted to or received in that other Contracting State.

(2) The provisions of section 23A of the Bangladesh Income-tax Act relating to the imposition of additional tax on undistributed profits shall not apply to the income of a company, being a resident of Bangladesh, more than 50 per cent of the voting shares of which are owned by a company which is a resident of the United Kingdom and quoted on a stock exchange, if the undistributed profits of the first-mentioned company are wholly or mainly retained for the purpose of industrial development in Bangladesh.

(3) Directors' fees and 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.

(4) The provisions of Bangladesh law which provide for a rebate of tax to be given in certain circumstances to a public company shall not be construed as being inconsistent with the provisions of Article 23.

ARTICLE 22

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*) Bangladesh tax payable under the law of Bangladesh and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Bangladesh (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 Bangladesh tax is computed;

(*b*) in the case of a dividend paid by a company which is a resident of Bangladesh 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 Bangladesh tax creditable under the provisions of sub-paragraph (*a*) of this paragraph) the Bangladesh tax payable by the company in respect of the profits out of which such a dividend is paid.

(2) For the purposes of paragraph (1) of this Article, the term "Bangladesh tax payable" shall be deemed to include any amount which would have been payable as Bangladesh tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under any of the following provisions of Bangladesh law:

(*a*) clause (xiii) of sub-section (3) of section 4 of the Bangladesh Income-tax Act;

clause (viia) of sub-section (2) of section 10 of the said Act;

sub-sections (2A), (2B), (2C) and (2D) of section 14A of the said Act;

paragraphs (c), (e), (f) and (g) of Notification number S.R.O. 417A-L/76 dated 29 November 1976; and

paragraphs (a), (b) and (d) of the said Notification so far as the exemption or relief relates to loans made with a view to promoting economic development in Bangladesh;

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

(*b*) under any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Bangladesh tax was first granted in respect of that source; but this proviso shall not apply to interest within the scope of the said Notification.

(3) Subject to the provisions of the law of Bangladesh regarding the allowance as a credit against Bangladesh tax of tax payable in a territory outside Bangladesh (which shall not affect the general principle hereof), United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom shall be allowed as a credit against any Bangladesh tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed.

(4) For the purposes of paragraphs (1) and (3) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

(5) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (3) of this Article.

ARTICLE 23

Non-discrimination

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident. For the purposes of this paragraph the term "individuals" includes, in the case of Bangladesh, unregistered firms, associations of persons and Hindu undivided families which are entitled to the same personal allowances, reliefs and reductions as individuals.

(5) In this Article the term "taxation" means taxes which are the subject of this Convention.

ARTICLE 24

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 25

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Convention and of the domestic laws of the Contracting States concerning taxes covered by this Convention insofar as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons or authorities other than those concerned with the assessment or collection of the taxes which are the subject of the Convention.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on one of the Contracting States the obligation:

(*a*) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting State;

(*b*) to supply particulars which are 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.

ARTICLE 26

Entry into force

The Convention shall come into force on the date when the last of all such things shall have been done in the United Kingdom and Bangladesh as are necessary to give the Convention the force of law in the United Kingdom and Bangladesh respectively, and shall thereupon have effect:

(*a*) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1978;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1978;

(*b*) in Bangladesh for any year of assessment beginning on or after 1 July 1978.

ARTICLE 27

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1980. In such event, the Convention shall cease to have effect:

(*a*) in the United Kingdom:

(i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 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 1 April in the calendar year next following that in which the notice is given;

(*b*) in Bangladesh for any year of assessment beginning on or after 1 July in the calendar year next following that in which the notice is given.

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

Done in duplicate at Dacca this eighth day of August 1979.

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

(F. S. Miles)

For the Government of the People's Republic of Bangladesh:

(K. M. M. Hossain)

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with Bangladesh scheduled to this Order, air transport profits, certain trading profits not arising through a permanent establishment, pensions (other than Government pensions) and the earnings of temporary business visitors are, subject to certain conditions, to be taxed only in the country of the taxpayer's residence. Where an enterprise resident in one country carries on business through a permanent establishment in the other, the profits of the enterprise which are attributable to that permanent establishment may be taxed in that other country. Government salaries and pensions are normally to be taxed by the paying Government only. The remuneration of visiting teachers and certain payments made to visiting students are, subject to certain conditions, to be exempt in the country visited. Income from immovable property may be taxed in the country in which the property is situated and income derived by public entertainers from their personal activities may normally be taxed in the country in which those activities are exercised.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. The credit to be given in the United Kingdom for tax payable in Bangladesh is to include credit for tax spared under certain provisions of Bangladesh law.

The rate of tax in the country of source on dividends flowing to the other country is normally not to exceed 10 per cent where the dividend is paid to a company which controls at least 10 per cent of the voting power in the paying company and 15 per cent in all other cases.

The maximum rate of tax to be imposed by the country of source upon interest paid to a resident of the other country is, in general, 10 per cent. The rate of tax, however, is not to exceed $7\frac{1}{2}$ per cent where the interest is derived by a bank or other financial institution. Interest received by the Government (or a governmental institution) of either state is to be exempt in the country of source.

The rate of tax in the source country on royalties flowing from one country to the other is in general not to exceed 10 per cent.

There is provision for the taxation of capital gains on immovable property by the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment or fixed base which the taxpayer has in the other country.

There are also provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is to take effect in the United Kingdom in respect of income tax and capital gains tax for the tax year 1978/79 and subsequent years and in respect of corporation tax for the financial year commencing on 1 April 1978 and subsequent years.