STATUTORY INSTRUMENTS

1976 No. 1342

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Fiji) Order 1976

Laid before the House of Commons in draft

Made - - - - 17th *August* 1976

At the Court at Balmoral the 17th day of August 1976

Present,
The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament 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 this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98 (2) of the Finance Act 1972(**b**) and section 39 of the Finance Act 1965(**c**), as amended, 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) (Fiji) Order 1976.

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 Fiji 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 Fiji; and

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

N. E. Leigh

(a) 1970 c. 10. (b) 1972 c. 41. (c) 1965 c. 25.

SCHEDULE

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

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

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

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;

(*b*) in Fiji:

(i) the income tax (including basic tax and normal tax);

(ii) the non-resident dividend withholding tax, the interest withholding tax and the dividend tax; and

(iii) the land sales 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. The competent authorities of the Contracting States shall notify to each other any changes which are 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 in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, 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 "Fiji" means the islands of Fiji, including the island of Rotuma and its dependencies, and includes all areas of water which in accordance with international law have been or may hereafter be designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the sea bed and its sub-soil and the natural resources thereof;

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

(i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;

(ii) in relation to Fiji:

(*a*) all citizens of Fiji; and

(*b*) all legal persons, partnerships and associations deriving their status as such from the law of Fiji;

(*d*) the term "United Kingdom tax" means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of Article 2; the term "Fiji tax" means tax imposed by Fiji being tax to which this Convention applies by virtue of the provisions of Article 2;

(*e*) the term "tax" means United Kingdom tax or Fiji tax, as the context requires;

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

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

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

(*i*) 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;

(*j*) 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 Fiji the Commissioner of Inland Revenue or his authorised representative;

(*k*) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country.

(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 paragraphs (2) and (3) of this Article, any person who, under the law of that Contracting 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 only if he derives income from sources therein. The terms "resident of the United Kingdom" and "resident of Fiji" shall be construed accordingly.

(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 mine, oil well, quarry or other place of extraction of natural resources;
(*g*) a building site or construction or assembly project which exists for more than six months;
(*h*) an agricultural, pastoral or forestry property.

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

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or 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 auxillary character, for the enterprise.

(4) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if:

(*a*) it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in Article 17; or
(*b*) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other Contracting State.

(5) 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 the provisions of paragraph (6) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that Contracting State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(6) 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 Contracting State through a broker, general commission agent or any other agent of an independent status, where 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Limitation of relief

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 Contracting State shall apply only to so much of the income as is remitted to or received in that other Contracting State.

ARTICLE 7

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 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 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, 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 8

Business profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that Contracting 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 Contracting State but only so much of them as is attributable to that permanent establishment.

(2) 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 (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) In so far as it has been customary in a Contracting State according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total income of the enterprise to its various parts, nothing in paragraph (2) of this Article 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 of this Article.

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

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

(7) Where profits include items 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.

(8) Where profits are attributable to a permanent establishment situated in a Contracting State of an enterprise of the other Contracting State and those profits are remitted in whole or in part out of the first-mentioned State, then the profits so remitted shall not be subject to any greater charge to tax in the first-mentioned State than if they had not been so remitted.

(9) Nothing in this Article shall affect any provisions of the law of either Contracting State regarding the taxation of:

(*a*) any person who carries on a business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Convention relating to the taxation of any such person is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult each other with a view to agreeing to such amendment of this sub-paragraph as may be necessary;

(*b*) any income from the alienation of immovable property as defined in paragraph (2) of Article 7 which is situated in that Contracting State or from the alienation of shares in a company incorporated in that Contracting State whose assets consist wholly or mainly of such immovable property situated therein.

ARTICLE 9

Shipping and air transport

A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined wholly or mainly to places in the other Contracting State.

ARTICLE 10

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 11

Dividends

(1) Dividends derived from a company which is a resident of Fiji by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be

taxed in Fiji but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Fiji may be taxed in Fiji. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of Fiji the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

(*a*) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Fiji may be taxed in Fiji.

(ii) Where a resident of Fiji is entitled to a tax credit in respect of such a dividend under sub-paragraph (*b*) of this paragraph tax may also be charged in the United Kingdom and according to the laws 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.

(iii) Except as provided in sub-paragraph (*a*) (ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Fiji shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(*b*) A resident of Fiji who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (*c*) of this paragraph and provided he is the beneficial owner of the 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 such credit over his liability to United Kingdom tax.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph shall not apply where the beneficial owner of the dividends is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends. For the purpose of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(4) 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 12 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.

(5) The provisions of paragraph (1), or as the case may be paragraphs (2) and (3), 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 and the holding by virtue of which the dividends are paid is effectively connected with a business carried on through that permanent establishment. In such a case the provisions of Article 8 shall apply.

(6) If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividend is paid then the provisions of paragraph (1), or as the case may be paragraphs (2) and (3), of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it

received in a period ending twelve months or more before the relevant date. For the purpose of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend 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 beneficial owner of the dividend shows that the shares were acquired for *bona fide* commercial reasons and not primarily for the purposes of securing the benefit of this Article.

(7) 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 dividends paid by the company, except in so far as such dividends are paid to a resident of that other State or in so far 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 12

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) However, such interest may also be taxed in the Contracting State in which it arises, 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 interest.

(3) The term "interest" as used in this paragraph 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 assimulated to income from money lent by the taxation law of the State in which the income arises.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State in which the interest arises a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(5) Interest shall be deemed to arise in a Contracting State when the payer is the Government of that State, 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) Any provision of the law of one of the Contracting States which relates only to interest paid to a non-resident company with or without any further requirement, or which relates only to interest payments between interconnected companies with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a dividend or distribution. The preceding sentence shall not however apply to interest derived and beneficially owned by a company which is a resident of one of the Contracting States in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

(7) The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

(*a*) does not bear tax in respect thereof in the Contracting State of which it is a resident; and

(*b*) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(8) 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, having regard to the debt-claim for which it is 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 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.

ARTICLE 13

Royalties and management fees

(1) Royalties and management fees 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) Royalties derived and beneficially owned by a resident of a Contracting State 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 15 per cent of the gross amount of the royalties.

(3) Management fees derived and beneficially owned by a resident of a Contracting State 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 15 per cent of the net amount of the management fees after deduction of any amount allowed as expenses against those management fees in computing the tax payable thereon in the first-mentioned Contracting State.

(4) (*a*) 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 royalties or other amounts paid in respect of the extraction or removal of natural resources.

(*b*) The term "management fees" as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial, scientific or commercial advice, or management or technical services, or similar services or facilities, but it does not include payments for independent personal services mentioned in Article 15.

(5) Notwithstanding the provisions of paragraph (2) of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, artistic or scientific work (excluding royalties and like payments in respect of cinematograph films and films or tapes for radio or television broadcasting) arising in a Contracting State and which are derived and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the royalties or management fees, being a resident of a Contracting State, has in the other Contracting State in which the royalties or management fees arise, a permanent establishment and the right or property giving rise to the royalties is, or the management fees are, effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(7) Royalties and management fees shall be deemed to arise in a Contracting State where the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties or management fees, 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 or management fees was incurred and the royalties or management fees are borne by that permanent establishment, then the royalties or management fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

(8) 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 or management fees paid, having regard to the advice, services, use, right or information for which they are 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 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.

ARTICLE 14

Capital gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 7, may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of shares in a company incorporated in a Contracting State whose assets consist wholly or mainly of immovable property as defined in paragraph (2) of Article 7 which is situated in that Contracting State may be taxed in that State.

(3) 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 permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

(4) Notwithstanding the provisions of paragraph (3) 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 the Contracting State.

(5) 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.

(6) The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by a person who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.

ARTICLE 15

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 Contracting State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

(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 16

Employments

(1) Subject to the provisions of Articles 18, 19 and 21, 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 Contracting 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 Contracting 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 Contracting 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 Contracting State; and
(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting 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.

(4) In relation to remuneration of a director of a company derived from the company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to "employer" were references to the company.

ARTICLE 17

Artistes and athletes

Notwithstanding the provisions of Articles 15 and 16, 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.

ARTICLE 18

Pensions

(1) Subject to the provisions of paragraphs (1) and (2) of Article 19, 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 19

Governmental functions

(1) Remuneration, including pensions, paid by the Government of a Contracting State to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other Contracting State if the individual is not ordinarily resident in that other State or (where the remuneration is not a pension) is ordinarily resident in that other State solely for the purpose of rendering those services.

(2) The provisions of paragraph (1) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by the Governments of either of the Contracting States for the purposes of profit.

ARTICLE 20

Students

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned Contracting 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 the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 21

Teachers

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

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

(*b*) in the case of a dividend paid by a company which is a resident of Fiji 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 Fiji tax for which credit may be allowed under the provisions of sub-paragraph (*a*) of this paragraph) the Fiji tax payable by the company in respect of the profits out of which such dividend is paid.

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

(*a*) any of the following provisions, that is to say—

section 16(2)(*a*) and section 16(2)(*b*) of the Income Tax Act 1974;

section 8(1) of the Hotels Aid Ordinance 1964;

section 9(3)(*h*) of the Income Tax Act 1974 provided that relief is given for the same taxable year under either section 16(2)(*a*) or section 16(2)(*b*) of the Income Tax Act 1974 or section 8(1) of the Hotels Aid Ordinance 1964;

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

(*b*) any other provision which may subsequently be made granting an exemption or reduction 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, Fiji tax was first granted in respect of that source.

(3) Subject to the provisions of the law of Fiji regarding the allowance as a credit against Fiji tax of tax payable in a territory outside Fiji (which shall not affect the general principle thereof)—

(*a*) 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 (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 Fiji tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed;

(*b*) in the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Fiji and which controls directly or indirectly at least 10 per cent of the voting power in the United Kingdom company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under the provisions of sub-paragraph (*a*) of this paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.

(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

Personal allowances

(1) Individuals who are residents of Fiji shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Fiji tax as Fiji nationals not resident in Fiji.

ARTICLE 24

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:

Provided that this paragraph shall not prevent the Government of a Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the other Contracting State an additional tax not exceeding 15 per cent of two-thirds of the profits of the permanent establishment after payment of the company or corporation tax on those profits.

(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 State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(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, nor as conferring any exemption from tax in a Contracting State in respect of dividends paid to a company which is a resident of the other Contracting State.

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

ARTICLE 25

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions 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 26

Exchange of information

The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection, enforcement or prosecution in respect of taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 27

Entry into force

(1) This Convention shall come into force on the date when the last of all such things shall have been done in the United Kingdom and Fiji as are necessary to give

the Convention the force of law in the United Kingdom and Fiji respectively, and shall thereupon have effect:

(*a*) in the United Kingdom:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1975;

(ii) as respects corporation tax, for any financial year beginning on or after 1 April 1975;

(*b*) in Fiji:

as respects income tax (including basic tax and normal tax), non-resident dividend withholding tax, interest withholding tax, dividend tax and land sales tax for any year of assessment beginning on or after 1 January 1975.

(2) Subject to the provisions of paragraph (3) of this Article, the Arrangement between the Government of the United Kingdom and the Government of Fiji made in 1950(**a**), as amended by the Arrangement made in 1968(**b**) (hereinafter referred to as "the 1950 Arrangement"), shall cease to have effect as respects taxes to which this Convention in accordance with the provisions of paragraph (1) of this Article applies.

(3) Where any provision of the 1950 Arrangement would have afforded any greater relief from tax any such provision shall continue to have effect for any year of assessment or financial year beginning before the entry into force of this Convention.

ARTICLE 28

Termination

(1) This Convention shall remain in force until terminated by one of the Governments. Either Government may denounce the Convention 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) as respects 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) as respects 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 Fiji:

as respects income tax (including basic tax and normal tax), non-resident dividend withholding tax, interest withholding tax, dividend tax and land sales tax for any year of assessment beginning on or after 1 January in the calendar year next following that in which the notice is given.

(2) The termination of this Convention shall not have the effect of reviving any Arrangement terminated by this Convention.

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

Done in duplicate at Suva this 21st day of November 1975.

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

BRIAN MILLER

For the Government of Fiji:

C. A. STINSON

(**a**) S.I. 1950/749 (1950 I, p. 1029).

(**b**) S.I. 1968/308 (1968 I, p. 934).

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with Fiji scheduled to this Order (which is to replace the Arrangement made with Fiji in 1950 as amended by the Arrangement made in 1968) shipping and air transport profits, certain trading profits not arising through a permanent establishment, copyright royalties, pensions (other than Government service 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. Government salaries and pensions are, subject to certain conditions, to be taxed by the paying Government only. The remuneration of visiting teachers and professors and payments for the maintenance and training of visiting students are, in certain circumstances, to be exempt in the country visited.

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 Fiji is to include credit for tax spared under certain provisions of Fiji law.

The treatment of dividends has been altered to take account of the introduction of the imputation system of company tax in the United Kingdom. The rate of tax in the country of source on dividends flowing to the other country will not normally exceed 15 per cent. Specific provision is made however for dividends paid by a United Kingdom company to a resident of Fiji as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom; where a United Kingdom company pays a dividend to a resident of Fiji (other than to a company which controls directly or indirectly at least 10 per cent of the voting power in the paying company) the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit.

The rate of tax to be imposed by the country of source on the gross amount of interest and royalties flowing from one country to the other is, in general, not to exceed 10 per cent and 15 per cent respectively while that on management fees is normally not to exceed 15 per cent of the net amount of the fees.

There is provision for the taxation of capital gains from the alienation of immovable property and, in certain circumstances, of shares in a company whose assets consist mainly of immovable property, by the country in which that 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 for the exchange of information, for consultation between the taxation authorities of the two countries and for safeguarding nationals and enterprises of one country against discriminatory taxation in the other country; a limited additional tax may however be charged on the net profits attributable to a permanent establishment in one country of a company which is a resident of the other.

The Convention is to take effect in the United Kingdom as respects income tax and capital gains tax for the tax year 1975/76 and subsequent years and as respects corporation tax for the financial year commencing on 1st April 1975 and subsequent years.

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