STATUTORY INSTRUMENTS

1978 No. 785

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Ghana) Order 1978

Laid before the House of Commons in draft

Made - - - - 31*st May* 1978

At the Court at Buckingham Palace, the 31st day of May 1978

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 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) (Ghana) Order 1978.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Gold Coast) Order 1947**(d)**, have been made with the Government of the Republic of Ghana with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax or development land tax and taxes of a similar character imposed by the laws of Ghana; and

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

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

(a) 1970 c. 10. (b) 1972 c. 41. (c) 1965 c. 25. (d) S.I. 1947/2868.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF GHANA 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 Republic of Ghana;

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;

(iii) the capital gains tax; and

(iv) the development land tax;

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

(*b*) in Ghana:

(i) the income tax;

(ii) the mineral oil tax;

(iii) the tax on rents; and

(iv) the capital gains tax;

(hereinafter referred to as "Ghana 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 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 "Ghana" means the Republic of Ghana including any area outside the territorial sea of Ghana which in accordance with international law has been or may hereafter be designated, under the laws of Ghana concerning the Continental Shelf, as an area within which the rights of Ghana with respect to the sea bed and sub-soil 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, providing in either case he has the right of abode in the United Kingdom; and any legal person, partnership, association, or other entity deriving its status as such from the law in force in the United Kingdom;

(ii) in relation to Ghana, any citizen of Ghana and any legal person, partnership, association or other entity deriving its status as such from the law in force in Ghana;

(*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 "Ghana tax" means tax imposed by Ghana being tax to which this Convention applies by virtue of the provisions of Article 2;

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

(*f*) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Ghana, 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 Ghana the Commissioner of Income Tax or his authorised representative.

(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

Residence

(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 residence. The terms "resident of the United Kingdom" and "resident of Ghana" 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, 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*) the provision of supervisory activities for more than six months on a building site or construction or assembly project;

(*i*) the provision of supervisory activities in connection with a construction or assembly project which is incidental to the sale of machinery or equipment where the charge payable for such activities exceeds 10 per cent of the sale price of the machinery or equipment;

(*j*) a farm or plantation;

(*k*) a place of extraction of timber or forest produce.

(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) An enterprise of a Contracting State 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 furnishes services, including consultancy services, in that other Contracting State through its employees or other personnel (other than agents of an independent status within the meaning of paragraph (6) of this Article) for a period or periods exceeding in the aggregate six months within any year of assessment.

(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 State if:

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

(*b*) he maintains in the first-mentioned State a stock of goods or merchandise belonging to that enterprise from which he regularly fulfils orders on behalf of 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 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. However, when the activities of such an agent are devoted wholly or almost wholly to the business of that enterprise, he shall not be considered an agent of an independent status within the meaning of this paragraph.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Limitation of relief

Where under any provision of this Convention income is relieved from tax in one of the Contracting States 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 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 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 income or profits

(1) The income or 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 income or 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) 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 income or 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 income or profits of a permanent establishment:

(*a*) 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 purpose of the permanent establishment, including executive and general administrative expenses in so far as they are reasonably connected with the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere;

(*b*) there shall not be allowed any deduction for payments by that permanent establishment to the head office or any other part of the enterprise, by way of royalties, fees or other similar payments for the use of patents or other rights or by way of commission for specific services or for management or (except in the case of a banking enterprise) by way of interest on moneys lent to the permanent establishment, unless such payments reimburse expenses actually incurred by the enterprise.

(4) In determining the income or profits of a permanent establishment amounts receivable by the permanent establishment from the head office or any other part of the enterprise by way of royalties, fees or other similar payments in return for the use of patents or other rights or by way of commission for specific services performed or for management or (except in the case of a banking enterprise) by way of interest on moneys lent to head office or any other part of the enterprise shall not be included in the receipts of the permanent establishment except insofar as they represent reimbursement of allowable expenses which it has actually incurred.

(5) Insofar as it has been customary in a Contracting State, according to its law, to determine the income or profits to be attributed to a permanent establishment on the basis of an apportionment of the total income or profits of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the income or 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.

(6) No income or 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.

(7) For the purposes of the preceding paragraphs, the income or 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.

(8) Where income or 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.

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 solely 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 Ghana and which are beneficially owned by a resident of the United Kingdom, shall be exempt from any tax in Ghana which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Ghana may be taxed in Ghana. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but provided that the beneficial owner of the dividends is a resident of Ghana the tax so charged shall not exceed:

(*a*) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls 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) 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 Ghana may be taxed in Ghana.

(ii) Where a resident of Ghana 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 by a resident of Ghana who is the beneficial owner of those dividends shall be exempt from any tax which is chargeable in the United Kingdom on dividends.

(*b*) A resident of Ghana who receives a dividend 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 that dividend, 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 dividend 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 dividend. For the purpose of this sub-paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) In this Article the term "dividends" means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other 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) 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 paragraphs (1), (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 purposes 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 purpose of securing the benefit of this Article.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on a trade or business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 8 or Article 15, as the case may be, shall apply.

(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 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 the 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 15 per cent of the gross amount of the interest.

(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. The term "interest" shall not include any item which is treated as a distribution under the provisions of Article 11 of this Convention.

(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 that State itself, a local authority or a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment 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 inter-connected companies with or without any further requirements, 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 he 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 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.

ARTICLE 13

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 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) 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 (excluding 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 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 a royalty or other amount paid in respect of the operation of a mine or quarry or of other 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, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 8 shall apply.

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the 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 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 any 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 any 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.

(2) Notwithstanding the provisions of paragraph (1) 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.

(3) Capital gains from the alienation of any property other than those mentioned in paragraph (1) shall be taxable only in the Contracting State of which the alienator is a resident.

(4) The provisions of paragraph (3) 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 an individual 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) Where a resident of a Contracting State derives income from the other Contracting State in respect of professional services or other independent activities of a similar character he shall be subject to tax in that other State but only in respect of

such part of that income as is attributable to his services in that other State. In determining the income attributable to such services, there shall be allowed as a deduction expenses incurred in the performance of those services including reasonable administrative and general expenses so incurred, whether in the State in which the services are performed or elsewhere.

(2) The term "professional services" includes especially independent scientific, literary, artistic, education and 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 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.

(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 reference 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 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, or out of funds created by, a Contracting State to any individual in respect of services rendered to that State 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 this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting States for 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 is invited to 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*) Ghana tax payable under the laws of Ghana and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Ghana 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 Ghana tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(*b*) In the case of a dividend paid by a company which is a resident of Ghana 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 Ghana tax for which credit may be allowed under the provisions of sub-paragraph (*a*) of this paragraph) the Ghana 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 "Ghana tax payable" shall be deemed to include any amount which would have been payable as Ghana

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:

(i) Paragraph (*f*) of sub-section (1) of Section 3 of the Income Tax Decree 1975; or

(ii) Paragraphs 13 and 14 of the Capital Investments Decree 1973; or

(iii) Paragraph 15 of the Capital Investments Decree 1973 by way of capital allowances in so far as they are for an amount which exceeds the original cost of the asset;

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, Ghana tax was first granted in respect of that source.

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

(*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 shall be allowed as a credit against any Ghana tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

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

(5) 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, nor as obliging one Contracting State to grant to a company which is a resident of the other Contracting State such lower rates of tax as may be levied on a company which is a resident of the first-mentioned Contracting State in consequence of its being wholly owned by nationals of that Contracting State.

ARTICLE 24

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 25

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 evasion 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 26

Territorial extension

(1) This Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom or Ghana is responsible and which imposes taxes substantially similar in character to those to which this Convention applies. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed between the Contracting States in Notes to be exchanged through the diplomatic channel.

(2) Unless otherwise agreed by both Contracting States, the termination of this Convention shall terminate the application of this Convention to any territory to which it has been extended under this Article.

ARTICLE 27

Entry into force

(1) This Convention shall come into force[a] on the date when the last of all such things shall have been done in the United Kingdom and Ghana as are necessary to give the Convention the force of law in the United Kingdom and Ghana 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 1977;

(ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1977; and

(iii) in respect of development land tax chargeable on realised development value accruing on or after 1 April 1977;

(*b*) in Ghana:

in respect of income tax, mineral oil tax, capital gains tax and the tax on rents, for any year of assessment beginning on or after 1 July 1977.

(2) Subject to the provisions of paragraph (3) of this Article, the Arrangement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income which was made in 1947 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Gold Coast shall cease to have effect as respects taxes to which this Convention in accordance with paragraph (1) of this Article applies.

(3) Where any provision of the Arrangement made in 1947 would have afforded any greater relief from tax any such provision as aforesaid 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

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any

[a] The Convention came into force on 31st May 1978.

calendar year after the year of 1979. 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;

(iii) in respect of development land tax chargeable on realised development value accruing on or after 1 April in the calendar year next following that in which the notice is given;

(*b*) in Ghana:

in respect of income tax, mineral oil tax, capital gains tax and the tax on rents, 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 London this 29 day of November 1977.

FOR THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

Ted Rowlands.

FOR THE GOVERNMENT OF THE REPUBLIC OF GHANA:

S. M. Asante.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

Under the Convention with Ghana scheduled to this Order (which is to replace the Arrangement made with the Gold Coast in 1947) shipping and air transport profits, certain trading profits not arising through a permanent establishment, pensions (other than Government pensions) and earnings from employment 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 and business apprentices 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 be taxed in the country in which those activities are exercised. Income from professional or similar services may be taxed in the country in which the services are performed on that part of the income attributable to such services.

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

The treatment of dividends takes account of the introduction of the imputation system of company taxation in the United Kingdom. Where a United Kingdom company pays a dividend to a resident of Ghana (other than to a company which controls 10 per cent or more of the voting power in the paying company), the beneficial owner will, subject to certain conditions, receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less a deduction at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. In the event of the imputation system being withdrawn, the maximum rate of tax to be deducted from dividends flowing from the United Kingdom to Ghana would be 5 per cent if the beneficial owner of the dividends is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends, and 15 per cent in all other cases. Dividends paid by Ghanaian companies to residents of the United Kingdom will not, in general, be subject to any additional tax in Ghana once the company has paid the tax attributable to its profits or income.

The maximum rate of tax to be imposed by the country of source upon interest and royalties paid to a resident of the other country is, in general, not to exceed 15 per cent.

There is provision for capital gains 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 in which case they may be taxed in that 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 as respects income tax and capital gains tax for the tax year 1977/78 and subsequent years and as respects corporation tax for the financial year commencing on 1 April 1977 and subsequent years. There is a transitional provision which provides that, where the existing Arrangement would afford greater relief from tax than this Convention, the existing provisions shall continue to have effect for any year of assessment or financial year beginning before the entry into force of this Convention.

SI 1978/785
ISBN 0-11-083785-1

