

FALKLAND ISLANDS

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Double Taxation Relief Arrangement (United Kingdom) Order 1996

(S.R. & O. No. 37 OF 1996)

ARRANGEMENT OF PROVISIONS

1. Citation and commencement

2. Interpretation

Schedule - Arrangement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Falkland Islands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains

FALKLAND ISLANDS

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Double Taxation Relief Arrangement (United Kingdom) Order 1996

Made: 19 December 1996
Published: 24 December 1996
Coming into force: in accordance with article 1

IN EXERCISE of my powers under section 127 of the Taxes Ordinance 1994 and of all other powers enabling me in that behalf, I make the following Order—

1. Citation and commencement

This Order may be cited as the Double Taxation Relief Arrangement (United Kingdom) Order 1996 and shall come into force on such date as is notified in the Gazette by Notice signed by the Commissioner of Taxation as being the date on which the Arrangement came into force in accordance with the provisions of paragraph 29 thereof (and in accordance with that paragraph then has effect in the Falkland Islands in relation to every year of assessment beginning on or after that 1st January 1997).

2. Interpretation

In this Order "the Arrangement" means the Arrangement between The Government of the United Kingdom of Great Britain and Northern Ireland and The Government of the Falkland Islands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, the text of which is set out in the Schedule to this Order.

SCHEDULE

ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FALKLAND ISLANDS 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 Falkland Islands;

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

Have arranged as follows:

1. Persons Covered

This Arrangement shall apply to persons who are residents of one or both of the territories.

2. Taxes covered

(1) This Arrangement shall apply to taxes on income and on capital gains imposed on behalf of a territory, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income , including taxes on gains from the alienation of movable or immovable property.

(3) The existing taxes which are the subject of this Arrangement are:

(a) in the United Kingdom :

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

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

(b) in the Falkland Islands:

(i) the income tax, including the tax on royalties and capital gains; and

(ii) the corporation tax, including the tax on royalties and capital gains;

(hereinafter referred to as "Falkland Islands tax")

(4) This Arrangement shall also apply to any identical or substantially similar taxes which are imposed by either territory after the date upon which this Arrangement has effect in addition to, or in place of, the existing taxes. The competent authorities of the territories shall notify each other of any substantial changes which are made in their respective taxation laws.

3. General definitions

(1) For the purposes of this Arrangement, 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 "the Falkland Islands" means the colony of the Falkland Islands, the territorial sea of the Falkland Islands and any area outside the territorial sea of the Falkland Islands which is a designated area (and for the purposes of this sub-paragraph "designated area" has the same meaning as it has in Proclamation Number 1 of 1991 of the Falkland Islands) or any other area in relation to which the Crown in right of government of the Falkland Islands exercises jurisdiction over the exploration and exploitation of the non-living resources of the seabed and sub-soil;

(c) the terms "a territory" and "the other territory" mean the United Kingdom or the Falkland Islands, as the context requires;

(d) the term "person" includes an individual, a company and any other body of persons, but does not include a partnership;

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

(f) the terms "enterprise of a territory" and "enterprise of the other territory" mean respectively an enterprise carried on by a resident of a territory and an enterprise carried on by a resident of the other territory;

(g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise of a territory, except when the ship or aircraft is operated solely between places in the other territory;

(h) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of the Falkland Islands the Commissioner of Taxation or his authorised representative.

(2) As regards the application of this Arrangement at any time by a territory, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has at that time under the laws of that territory for the purposes of the taxes to which this Arrangement applies, any meaning under the applicable tax laws of that territory prevailing over a meaning given to the term under other laws of that territory.

4. Residence

(1) For the purposes of this Arrangement, the term "resident of a territory" means any person who, under the law of that territory, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that territory and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that territory only if he derives income or capital gains from sources therein.

(2) Where by reason of the provisions of sub-paragraph (1) of this Paragraph an individual is a resident of both territories, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident only of the territory with which his personal and economic relations are closer (centre of vital interests);

(b) if the territory 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 territory, he shall be deemed to be a resident only of the territory in which he has an habitual abode;

(c) if he has an habitual abode in both territories or in neither of them, the competent authorities of the territories shall settle the question by mutual agreement.

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

5. Permanent establishment

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

(2) The term "permanent establishment" includes especially:

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop;

(f) a mine, an oil or gas well, a quarry or any other place of exploration, extraction or exploitation of natural resources; and

(g) an installation or structure used for the exploration or exploitation of natural resources.

(3) A building site, a construction, assembly or installation project or supervisory activities connected therewith constitute a permanent establishment but only where such site, project or activities continue for more than six months.

(4) Notwithstanding the preceding provisions of this Paragraph, the term "permanent establishment" shall be deemed not 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 of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (a) to (e), of this sub-paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of sub-paragraphs (1) and (2) of this Paragraph, where a person, other than an agent of an independent status to whom sub-paragraph (6) of this Paragraph applies, is acting on behalf of an enterprise, and has, and habitually exercises, in a territory an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that territory in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in sub-paragraph (4) of this Paragraph which, if exercised through a fixed place of business, would not make that fixed place of business a permanent establishment under the provisions of that sub-paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a territory merely because it carries on business in that territory through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

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

6. Income from immovable property

(1) Income derived by a resident of a territory from immovable property (including income from agriculture or forestry) situated in the other territory may be taxed in that other territory.

(2) The term "immovable property" shall have the meaning which it has under the law of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of sub-paragraph (1) of this Paragraph 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 Paragraph shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

7. Business profits

(1) The profits of an enterprise of a territory shall be taxable only in that territory unless the enterprise carries on business in the other territory 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 territory but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of sub-paragraph (3) of this Paragraph, where an enterprise of a territory carries on business in the other territory through a permanent establishment situated therein, there shall in each territory be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including a reasonable allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the territory in which the permanent establishment is situated or elsewhere.

(4) Insofar as it has been customary in a territory to determine according to its law the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in sub-paragraph (2) of this Paragraph shall preclude that territory from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment shall, however, be such that the result will be in accordance with the principles contained in this Paragraph.

(5) For the purposes of the preceding sub-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.

(6) 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.

(7) Where profits include items of income or capital gains which are dealt with separately in other Paragraphs of this Arrangement, then the provisions of those Paragraphs shall not be affected by the provisions of this Paragraph.

(8) Where under the provisions of this Paragraph profits are attributable to a permanent establishment situated in a territory and those profits are remitted in whole or in part out of that territory, then the profits so remitted shall not be subject to any greater charge to tax in that territory than if they had not been so remitted.

8. Shipping and air transport

(1) Profits of an enterprise of a territory from the operation of ships or aircraft in international traffic shall be taxable only in that territory.

(2) For the purposes of this Paragraph, profits from the operation of ships or aircraft in international traffic include:

(a) profits from the rental on a bareboat basis of ships or aircraft; and

(b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental , as the case may be , is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of sub-paragraphs (1) and (2) of this Paragraph shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.

9. Associated enterprises

(1) Where:

(a) an enterprise of a territory participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a territory and an enterprise of the other territory;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a territory includes in the profits of an enterprise of that territory, and taxes accordingly, profits on which an enterprise of the other territory has been charged to tax in that other territory and the profits so included are profits which would have accrued to the enterprise of the first-mentioned territory if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other territory shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Arrangement and the competent authorities of the territories shall if necessary consult each other.

10. Dividends

(1) Dividends paid by a company which is a resident of a territory to a resident of the other territory may be taxed in that other territory.

(2) However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident and according to the laws of that territory, but if the beneficial owner of the dividends is a resident of the other territory 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) 10 per cent. of the gross amount of the dividends in all other cases.

(3) The term "dividends" as used in this Paragraph means income from shares, or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the territory of which the company making the distribution is a resident and also includes any other item which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of sub-paragraphs (1) and (2) of this Paragraph shall not apply if the beneficial owner of the dividends, being a resident of a territory, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Paragraph 7 or Paragraph 14, as the case may be, shall apply.

(5) Where a company which is a resident of a territory derives profits or income from the other territory, that other territory 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 territory 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 territory, 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 territory.

(6) The provisions of this Paragraph shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other

rights in respect of which the dividend is paid to take advantage of this Paragraph by means of that creation or assignment.

11. Interest

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

(2) The term "interest" as used in this Paragraph means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. The term "interest" shall not include any item which is treated as a dividend under the provisions of Paragraph 10 of this Arrangement.

(3) The provisions of sub-paragraph (1) of this Paragraph shall not apply if the beneficial owner of the interest, being a resident of a territory, carries on business in the other territory in which the interest arises, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Paragraph 7 or Paragraph 14 of this Arrangement, as the case may be, shall apply.

(4) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the 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 Paragraph shall apply only to the last-mentioned amount. In such case, the excess part of the payment shall remain taxable according to the law of each territory, due regard being had to the other provisions of this Arrangement.

(5) The provisions of this Paragraph shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Paragraph by means of that creation or assignment.

12. Royalties

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

(2) The term "royalties" as used in this Paragraph 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 information (know how) concerning industrial, commercial or scientific experience but does not include royalties or other amounts paid in respect of the right to work, extract or remove natural resources.

(3) The provisions of sub-paragraph (1) of this Paragraph shall not apply if the beneficial owner of the royalties, being a resident of a territory, carries on business in the other territory in which the royalties arise, through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Paragraph 7 or Paragraph 14 of this Arrangement, as the case may be, shall apply.

(4) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid exceeds, 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 Paragraph shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each territory, due regard being had to the other provisions of this Arrangement.

(5) The provisions of this Paragraph shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Paragraph by means of that creation or assignment.

13. Capital gains

(1) Gains derived by a resident of a territory from the alienation of immovable property referred to in Paragraph 6 of this Arrangement and situated in the other territory may be taxed in that other territory.

(2) Gains derived by a resident of a territory from the alienation of:

(a) shares, other than shares in which there is substantial and regular trading on a Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other territory, or

(b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other territory, or of shares referred to in sub-paragraph (a) above,

may be taxed in that other territory.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a territory has in the other territory or of movable property pertaining to a fixed base available to a resident of a territory in the other territory for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other territory.

(4) Gains derived by a resident of a territory from the alienation of ships or aircraft operated in international traffic by an enterprise of that territory or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that territory.

(5) Gains from the alienation of any property other than that mentioned in sub-paragraphs (1), (2), (3) and (4) of this Paragraph shall be taxable only in the territory of which the alienator is a resident.

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

14. Independent personal services

(1) Income derived by a resident of a territory in respect of professional services or other activities of an independent character shall be taxable only in that territory unless he has a fixed base regularly available to him in the other territory for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other territory 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.

15. Dependent personal services

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

(2) Notwithstanding the provisions of sub-paragraph (1) of this Paragraph, remuneration derived by a resident of a territory in respect of an employment exercised in the other territory shall be taxable only in the first-mentioned territory if:

(a) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other territory; and

(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other territory.

(3) Notwithstanding the preceding provisions of this Paragraph, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a territory may be taxed in the territory of which the enterprise operating the ship or aircraft is a resident.

16. Directors' fees

Directors' fees and other similar payments derived by a resident of a territory in his capacity as a member of the board of directors of a company which is a resident of the other territory may be taxed in that other territory.

17. Artistes and sportsmen

(1) Notwithstanding the provisions of Paragraphs 14 and 15 of this Arrangement, income derived by a resident of a territory as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other territory, may be taxed in that other territory.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Paragraphs 7, 14 and 15, be taxed in the territory in which the activities of the entertainer or sportsman are exercised.

18. Pensions

(1) Subject to the provisions of sub-paragraph (2) of Paragraph 19 of this Arrangement:

(a) pensions and other similar remuneration paid in consideration of past employment, and

(b) any annuity paid,

to an individual who is a resident of a territory, and is subject to tax in respect thereof in that territory, shall be taxable only in that territory.

(2) The term "annuity" means a stated sum payable to an individual periodically at stated times during his 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.

19. Government service

(1)

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

(b) However, such remuneration shall be taxable only in the other territory if the services are rendered in that territory and the individual is a resident of that territory who did not become so resident solely for the purpose of rendering the services.

(2) Any pension paid by, or out of funds created by, a territory or a political subdivision or a local authority thereof or by an agency of that territory, subdivision or authority to an individual in respect of services rendered to that territory, subdivision, authority or agency shall be taxable only in that territory.

(3) The provisions of Paragraphs 15, 16 and 18 shall apply to salaries, wages and other similar remuneration, and to pensions in respect of services rendered in connection with a business carried on by a territory or a political subdivision or a local authority thereof or by an agency of that territory, subdivision or authority.

20. Students

Payments which a student or business apprentice who is or was immediately before visiting a territory a resident of the other territory and who is present in the first-mentioned territory solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first-mentioned territory, provided that such payments arise from sources outside that territory.

21. Miscellaneous rules applicable to certain offshore activities

(1) The provisions of this Paragraph shall apply notwithstanding any other provision of this Arrangement.

(2) In this Paragraph the term "offshore activities" means activities which are carried on offshore in a territory in connection with the exploration or exploitation of the seabed and subsoil and their natural resources situated in that territory.

(3) An enterprise of a territory which carries on offshore activities in the other territory shall, subject to sub-paragraph (4) of this Paragraph, be deemed to be carrying on a trade in that other territory through a permanent establishment situated therein.

(4) The provisions of sub-paragraph (3) of this Paragraph shall not apply where the offshore activities are carried on in the other territory for a period or periods not exceeding in the aggregate 30 days in any twelve month period.

For the purposes of this sub-paragraph:

(a) where an enterprise of a territory carrying on offshore activities in the other territory is associated with another enterprise carrying on substantially similar offshore activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;

(b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

(5) Profits derived by an enterprise of a territory from the operation, in connection with offshore activities in the other territory, of ships or aircraft, may be taxed in that other territory.

(6) A resident of a territory who carries on offshore activities in the other territory consisting of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in that other territory.

(7) Salaries, wages and similar remuneration derived by a resident of a territory in respect of an employment connected with offshore activities in the other territory may, to the extent that the duties are performed offshore in that other territory, be taxed in that other territory.

(8) Gains derived by a resident of a territory from the alienation of:

(a) exploration or exploitation rights; or

(b) property situated in the other territory and used in connection with the exploration or exploitation of the seabed and subsoil and their natural resources in that other territory; or

(c) shares, other than shares which are listed in the official list of a recognised Stock Exchange, deriving any part of their value directly or indirectly from such rights or such property or from such rights and such property taken together;

may be taxed in that other territory but in the case of shares only insofar as the gain is attributable to such rights or property.

In this sub-paragraph:

the term "exploration or exploitation rights" means rights to assets to be produced by the exploration or exploitation of the seabed and subsoil and their natural resources in such territory, including rights to interests in or the benefit of such assets;

a stock exchange shall not be recognised unless it has been designated as such by the agreement of the competent authorities of both territories.

[Revision w.e.f. 1/7/2017] [S.R.&O. 14/24/w.e.f. 31/07/2017]

22. Other income

(1) Items of income beneficially owned by a resident of a territory, wherever arising, which are not dealt with in the foregoing Paragraphs of this Arrangement, other than income paid out of trusts or the estates of deceased persons in the course of administration, shall be taxable only in that territory.

(2) The provisions of sub-paragraph (1) of this Paragraph shall not apply to income, other than income from immovable property as defined in sub-paragraph (2) of Paragraph 6 of this Arrangement, if the recipient of such income, being a resident of a territory, carries on business in the other territory through a permanent establishment situated therein, or performs in that other territory independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Paragraph 7 or Paragraph 14 of this Arrangement, as the case may be, shall apply.

(3) Where, by reason of a special relationship between the resident referred to in sub-paragraph (1) of this Paragraph and some other person, or between both of them and some third person, the amount of the income referred to in sub-paragraph (1) of this Paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Paragraph shall apply only to the last mentioned amount. In

such a case, the excess part of the income shall remain taxable according to the laws of each territory , due regard being had to the other applicable provisions of this Arrangement.

(4) The provisions of this Paragraph shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the income is paid to take advantage of this Paragraph by means of that creation or assignment.

23. Limitation of relief

(1) Where under any provision of this Arrangement any income is relieved from tax in a territory and under the laws in force in the other territory a person, in respect of that income, is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof, the relief to be allowed under this Arrangement shall apply only to so much of the income as is taxed in the other territory.

(2) Where under Paragraph 13 of this Arrangement gains may only be taxed in one of the territories and under the law in force in that territory a person is subject to tax in respect of those gains by reference to the amount thereof which is received in that territory and not by reference to the full amount thereof, that Paragraph shall apply only to so much of the gains as are taxed in that territory.

24. Elimination of double taxation

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

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

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

(2) Subject to the provisions of the law of the Falkland Islands regarding the allowance as a credit against Falkland Islands tax of tax payable in a territory outside the Falkland Islands (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 Arrangement 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 Falkland Islands 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 the Falkland Islands 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 United Kingdom tax for which credit may be allowed under the provisions of paragraph (a) of this sub-paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.

(3) For the purposes of sub-paragraphs (1) and (2) of this Paragraph, profit, income and chargeable gains owned by a resident of a territory which may be taxed in the other territory in accordance with this Arrangement shall be deemed to arise from sources in that other territory.

(4) Subject to sub-paragraph (5) of this Paragraph, for the purposes of sub-paragraph (1) of this Paragraph, the term "Falkland Islands tax payable" shall be deemed to include any amount which would have been payable as Falkland Islands tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under :

(a) section 3 of the Taxes and Duties (Special Exemptions) Ordinance 1987 so far as this provision was in force on, and has not been modified since 30th December 1996, or has been modified only in minor respects so as not to affect its general character; or

(b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the territories 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.

(5) Relief from United Kingdom tax by virtue of sub-paragraph (4) shall not be given:

(a) where the profits, income or chargeable gains in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that sub - paragraph arise or accrue more than ten years after the date on which this Arrangement enters into force; or

(b) in respect of profits, income or chargeable gains from any source if that income or those profits or chargeable gains arise in a period beginning more than ten years after the exemption or reduction referred to in that sub-paragraph was first granted in respect of that source, whether that period began before or after the entry into force of this Arrangement.

(6) The period referred to in sub-paragraph (5)(a) of this Paragraph may be extended by arrangement between the Governments of the territories.

25. Non-discrimination

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

(2) Except where the provisions of sub-paragraph (1) of Paragraph 9, sub-paragraph (4) or (5) of Paragraph 11, sub-paragraph (4) or (5) of Paragraph 12, or sub-paragraph (3) or (4) of Paragraph 22 of this Arrangement apply, interest, royalties or other disbursements paid by an enterprise of a territory to a resident of the other territory shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned territory.

(3) Enterprises of a territory, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory shall not be subjected in the first-mentioned territory 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 territory are or may be subjected.

(4) Nothing contained in this Paragraph shall be construed as obliging either territory to grant to individuals not resident in that territory any of the personal allowances, reliefs and reductions for tax purposes, which are granted to individuals so resident.

(5) The provisions of this Paragraph shall apply to the taxes which are the subject of this Arrangement.

26. Mutual agreement procedure

(1) Where a resident of a territory considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident.

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

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

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

27. Exchange of information

(1) The competent authorities of the territories shall exchange such information as is necessary for carrying out the provisions of this Arrangement or of the domestic laws of the territories concerning taxes covered by this Arrangement insofar as the taxation thereunder is not contrary to this Arrangement, in particular, to prevent fraud and to facilitate the administration of

statutory provisions against legal avoidance. Any information received by a territory shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes covered by this Arrangement. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of sub-paragraph (1) of this Paragraph be construed so as to impose on a territory the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other territory;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or any trade process, or information the disclosure of which would be contrary to public policy.

28. Members of diplomatic or permanent missions and consular posts

Nothing in this Arrangement shall affect the fiscal privileges of members of diplomatic or permanent missions or consular posts under the general rules of international law or under the provisions of special agreements.

29. Entry into force

(1) Each of the territories shall notify to the other the completion of the procedures required by its law for the bringing into force of the Arrangement. The Arrangement shall enter into force on the date of the later of these notifications 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 6th April 1997;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April 1997; and

(b) in the Falkland Islands:

(i) in respect of income tax, including the tax on royalties and capital gains , for any year of assessment beginning on or after 1st January 1997;

(ii) in respect of corporation tax, including the tax on royalties and capital gains, for any financial year beginning on or after 1st January 1997.

(2) The Arrangement made in 1984 between the Government of the United Kingdom and the Government of the Falkland Islands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, as modified by the Supplementary Arrangement

made in, shall terminate and cease to be effective in respect of taxes to which this Arrangement in accordance with the provisions of sub-paragraph (1) of this Paragraph applies.

30. Termination

This Arrangement shall remain in force until terminated by the Government of one of the territories. Either Government may terminate the Arrangement by giving notice of termination to the other Government at least six months before the end of any calendar year beginning after the expiration of five years from the date of entry into force of the Arrangement. In such event, the Arrangement 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 6th April in the calendar year next following that in which the notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given; and

(b) in the Falkland Islands:

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

(ii) in respect of corporation tax, including the tax on royalties and capital gains, for any financial year beginning on or after 1st January in the calendar year next following that in which the notice is given.