L.N. 105 of 1995

INCOME TAX ACT
(CAP. 123)

Double Taxation Relief (Taxes on Income) (United Kingdom of Great Britain and Northern Ireland) Order, 1995

IN exercise of the powers conferred by section 76 of the Income Tax Act, the Minister of Finance has made the following order:—

Citation.

1. This order may be cited as the Double Taxation Relief (Taxes on Income) (United Kingdom of Great Britain and Northern Ireland) Order, 1995.

Arrangements to have effect.

2. It is hereby declared:—

(a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the United Kingdom of Great Britain and Northern Ireland with a view to affording relief from double taxation in relation to the following taxes imposed by the laws of the United Kingdom of Great Britain and Northern Ireland:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax;

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

(c) that the Convention has entered into force on the 27th March, 1995.

SCHEDULE

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

The Government of Malta and the Government of the United Kingdom of Great Britain and Northern Ireland, desiring to conclude a new 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:

CHAPTER I
SCOPE OF THE CONVENTION

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 existing taxes to which this Convention shall apply are:

(a) in the case of 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 case of Malta:

the income tax,
(hereinafter referred to as "Malta tax").

(2) This Convention shall apply also to any identical or substantially similar taxes which are imposed 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 each other of any significant changes which have been made in their respective taxation laws.

(3) Notwithstanding the other provisions of this Article this Convention shall not apply to tax paid or payable in Malta in accordance with the provisions of subsection (11) of section 31 of the Income Tax Act (Cap. 123) concerning the chargeable income of any person engaged in the production of petroleum produced in Malta or any substantially similar provision which is imposed after the date of signature of this Convention.

CHAPTER II

DEFINITIONS

ARTICLE 3

General Definitions

(1) For the purposes of this Convention, unless the context otherwise requires:

(a) The term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "Malta", when used in a geographical sense, means the Island of Malta, the Island of Gozo and the other islands of the Maltese archipelago including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the law of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the seabed and subsoil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Malta as the context requires;

(d) the term "person" comprises an individual and

(i) in relation to the United Kingdom, also a company or any other body of persons but does not include a partnership;

(ii) in relation to Malta, also a company and any other body of persons;

(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 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;

(g) the term "national" means:

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

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

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

(i) the term "competent authority" means:

(i) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative;

(ii) in the case of Malta, the Minister responsible for finance or his authorised representative.

(2) In 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 State concerning the taxes to which this Convention applies.

ARTICLE 4

Resident

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

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

(a) he shall be deemed to be a resident solely 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 States, he shall be deemed to be a resident solely 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 no permanent home available to him in either Contracting State, he shall be deemed to be a resident solely 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 solely 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 solely 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 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) an installation or structure for the exploration of natural resources;

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

(h) a building site or construction or assembly project or supervisory activities in connection therewith, where such site, project or activity continues for more than six months.

(3) Notwithstanding the preceding provisions of this Article, 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 sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(4) Notwithstanding the provisions of paragraphs (1) and (2) of this Article where a person — other than an agent of an independent status to whom paragraph (5) of this Article applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (3) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business. However, if the activities of such an agent are carried out wholly or almost wholly for the enterprise (or for the enterprise and other enterprises which are controlled by it or have a controlling interest in it or are subject to the same common control) and the conditions made or imposed between them in their commercial or financial relations differ from those which would have been made or imposed if this had not been the case, that agent shall not be considered to be an agent of an independent status for the purposes of this paragraph.

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

CHAPTER III

TAXATION OF INCOME

ARTICLE 6

Income from Immovable Property

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

(2) The term "immovable property" shall have the meaning which it has under the law of the Contracting State 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 immovable or 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 or to explore for, 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 independent personal services.

ARTICLE 7

Business Profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3) of this Article, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment or with other enterprises which are controlled by the first-mentioned enterprise or have a controlling interest in it or are subject to the same common control.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

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

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

(6) The provisions of this Article shall not affect the application of the provisions of the law of a Contracting State regarding the taxation of profits from the business of insurance.

(7) Where profits include items of income or capital gains 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 8

Shipping and Air Transport

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

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

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

ARTICLE 9

Associated Enterprises

(1) 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 by a Contracting State in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State, and taxes accordingly, profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to that enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State 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 Convention and the competent authorities of the Contracting States shall if necessary consult each other.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of the United Kingdom to a resident of Malta may be taxed in Malta.

(2) An individual who is a resident of Malta and who receives a dividend from a company which is a resident of the United Kingdom, shall subject to the provisions of this Article and provided that he is the beneficial owner of that dividend, be entitled:

(a) to a tax credit in respect thereof of an amount equal to the tax credit to which an individual resident in the United Kingdom would have been entitled had he received that dividend (in this Article referred to as "the resident's tax credit") less 15 per cent of the aggregate of the amount or value of that dividend and the amount of the resident's tax credit, and

(b) to payment of any amount by which the tax credit to which he is entitled by virtue of sub-paragraph (a) exceeds his liability to tax in the United Kingdom.

(3) Dividends paid by a company which is a resident of Malta to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Malta and according to the laws of Malta, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed that chargeable on the profits out of which the dividends are paid.

(4) The term "dividends" as used in this Article 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 laws of the State of which the company making the distribution is a resident and also includes any other item which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(5) The provisions of paragraph (2) or, as the case may be, (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on 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 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 a case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

ARTICLE 11

Interest

(1) Interest arising in a Contracting State and paid to 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 laws of that State, but if the recipient is the beneficial owner of the interest and subject to tax in respect of the interest in the other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures. The term "interest" shall not include any item which is treated as a distribution under the provisions of Article 10 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, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent 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 Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

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

(7) The provisions of this Article shall not apply if 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 Article by means of that creation or assignment.

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

(9) Notwithstanding the provisions of Article 7 of this Convention and of paragraph (2) of this Article, interest arising in a Contracting State which is paid to and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured by an institution beneficially owned by the Government of the Contracting State or any agency or instrumentality of that Government.

ARTICLE 12

Royalties

(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.

(2) However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties and subject to tax in respect of the royalties in the State of which he is a resident, the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" in this Article means payments or credits, whether periodical or not, and however described or computed, to the extent to which they are made as consideration for:

(a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark or other like property or right;

(b) the supply of scientific, technical, industrial or commercial knowledge or information (know-how);

(c) the supply of any assistance in the State of which the payer of the royalties is resident that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of any such property or right as is mentioned in sub-paragraph (a), or any such knowledge or information as is mentioned in sub-paragraph (b);

(d) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

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

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

(6) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties 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 such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if 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 Article by means of that creation or assignment.

ARTICLE 13

Alienation of Property

(1) Income or gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 of this Convention and situated in the other Contracting State may be taxed in that other State.

(2) Income or gains derived by a resident of a Contracting State from the alienation of:

(a) shares, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or

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

may be taxed in that other State.

(3) Income or gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such income or 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 State.

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

(5) Income or gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) of this Article shall be taxable only in the Contracting State of which the alienator is a resident provided that such income or gains are subject to tax in that Contracting State.

(6) The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its law a tax on income or 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 14

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services or activities of an independent character shall be taxable only in that State. However, such income may be taxed in the other Contracting State in the following circumstances:

(a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities (in which case only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State); or

(b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days during any calendar year.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

(1) Subject to the provisions of Articles 16, 18, and 19 of this Convention, 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 within any period of twelve months; 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 derived in respect of an employment exercised aboard a ship, or aircraft operated in international traffic may be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16

Directors' Fees

Directors' fees and similar payments derived by a resident of one of the Contracting States in his capacity as a member of the board of directors, or other comparable body however described, of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Artistes and Sportsmen

(1) Notwithstanding the provisions of Articles 14 and 15 of this Cinvention, income derived by a resident of a Contracting State 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 Contracting State, may be taxed in that other State.

(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 Articles 7, 14 and 15 of this Convention, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

ARTICLE 18

Pensions

(1) Subject to the provisions of paragraph (2) of Article 19 of this Convention, pensions and other similar remuneration paid in consideration of past employment, or any annuity paid, to an individual who is a resident of a Contracting State 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

Government Service

(1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof, to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

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

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 15, 16 and 18 of this Convention shall apply to remuneration and pensions in respect of services rendered in connection with any business carried on by a Contracting State or a political subdivision or a local authority thereof.

ARTICLE 20

Students and Trainees

An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State and is present in the other State solely:

(a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State; or

(b) as a business or technical apprentice; or

(c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government of either State or from a scientific, educational, religious, or charitable organisation or under a technical assistance programme entered into by the Government of either State;

shall be exempt from tax in that other State on:

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

(ii) the amount of such grant, allowance or award.

ARTICLE 21

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, which are not dealt with in the foregoing Articles of this Convention, other than income paid out of trusts or the estates of deceased persons in the course of administration, and which are subject to tax in that State shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Convention, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent 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 Article 7 or Article 14 of this Convention, as the case may be, shall apply.

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

CHAPTER IV

ELIMINATION OF DOUBLE TAXATION

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

(b) in the case of a dividend paid by a company which is a resident of Malta to a company which is 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 Malta tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Malta 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 Malta regarding the allowance as a credit against Malta tax of tax payable in a territory outside Malta, where, in accordance with the provisions of this Convention, there is included in a Malta assessment profits, income or chargeable gains from sources within the United Kingdom, the United Kingdom tax payable, whether directly or by deduction, in respect of those sources (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 Malta tax payable in respect of those profits, income or chargeable gains.

(3) For the purposes of paragraphs (1) and (2) 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 in that other Contracting State.

(4) Subject to paragraphs (5) and (6) of this Article, for the purposes of paragraph (1) of this Article the term "Malta tax payable" shall be deemed to include any amount which would have been payable as Malta tax for any year but for a deduction allowed in computing taxable income, or an exemption or reduction of tax granted for that year or any part thereof, under any of the following provisions of Malta law:

(a) the provisions of:

(i) section 3 and, where a deduction is allowed in computing taxable income by way of investment allowance, section 4 of the Aids to Industries Ordinance, 1959;

(ii) sections 7, 8 and 9 (so far as it provides for exemption from tax on dividends paid out of the gains or profits, or part thereof, of a company which are relieved from income tax under the provisions of section 7), 19, 20, 23 and 36 (5) of the Industrial Development Act, 1988;

so far as the provisions in question were in force on, and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character and provided always that the competent authority of Malta has certified that any such exemption from or reduction of Malta tax given under these sections has been granted in order to promote industrial, commercial, scientific, educational or other development in Malta and that the gains or profits of the company, or any part thereof, were not exempt from Malta tax for the year in question, or part thereof, under the provisions of Sections 4 or 5 of the Industrial Development Act, 1988, and the competent authority of the United Kingdom has accepted that such exemption or reduction has been granted for such purpose; or

(b) any other provision which may subsequently be enacted allowing a deduction in computing taxable income, or granting an exemption or reduction of tax, which is agreed by the competent authorities of the Contracting States to be of a substantially similar character to any of the provisions referred to in sub-paragraph (a)(i) or (ii) of this paragraph, so far as it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character, and subject always to certification and acceptance having taken place as provided for under sub-paragraph (a) of this paragraph.

(5) Relief from United Kingdom tax by virtue of paragraph (4) of this Article shall be given for a periog of ten years only, beginning with the date on which this Convention entered into force.

(6) The period referred to in paragraph (5) of this Article may be extended by agreement between the Contracting States.

ARTICLE 23

Limitation of Relief

(1) Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect ot that 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 taxed in the other Contracting State.

(2) The provisions of this Convention shall not apply to persons entitled to any special tax benefit under:

(a) A law of either one of the Contracting Sates which has been identified in an Exchange of Notes between the Contracting States; or

(b) Any substantially similar law subsequently enacted.

ARTICLE 24

Partnerships

(1) Where, under any provision of this Convention, a partnership is entitled, as a resident of Malta, to exemption from tax in the United Kingdom on any income or capital gains, that provision shall not be construed as restricting the right of the United Kingdom to tax any partner who is a resident of the United Kingdom on his share of such income or capital gains; but any such income or gains shall be treated for the purposes of Article 22 of this Convention as income or gains from sources in Malta.

(2) Nothing in Article 10 of this Convention shall entitle a partnership which is a resident of Malta to a tax credit in respect of dividends paid to the partnership by a company which is a resident of the United kingdom; but any partner who is a resident of Malta shall be treated for the purposes of the said Article 10 and of this paragraph as having been paid a dividend of an amount corresponding to his share of those dividends by the company which is a resident of the United Kingdom.

CHAPTER V

SPECIAL PROVISIONS

ARTICLE 25

Non-discrimination

(1) 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) Except where the provisions of paragraph (1) of Article 9, paragraph (6) of Article 11, or paragraph (6) of Article 12 of this Convention apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State 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 State.

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

(5) Nothing in this Article shall be construed as obliging a Contracting State to grant to individuals who are residents of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status, family responsibilities or any other personal circumstances which it grants to its own residents.

(6) The provisions of this Article shall apply to the taxes which are the subject of this Convention.

ARTICLE 26

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25 of this Convention to that of the Contracting State of which he is a national.

(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 a satisfactory 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 which is 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 27

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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 paragraph (1) of this Article be construed so as to impose on a Contracting State the obligation:

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

(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 Contracting State;

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

ARTICLE 28

Diplomatic and Consular Officials

Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 29

Entry into Force

(1) Each of the Contracting States shall notify to the other through the diplomatic channel the completion of the procedures required by its law for the bringing into force of this Convention. This Convention 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 6 April in the calendar year next following that in which the Convention enters into force;

(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 Convention enters into force;

(b) in Malta:

in respect of income tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which the Convention enters into force.

(2) The Arrangement between Her Majesty's Government and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income as amended by the Agreement signed at Valletta on 29th November 1974 (hereinafter referred to as "the 1961 Arrangement") shall terminate and cease to be effective from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (1) of this Article.

(3) Where any provision of the 1961 Arrangement would have afforded any greater relief from tax than is due under this Convention, any such provision as aforesaid shall continue to have effect:

(a) in the United Kingdom, for any year of assessment, financial year, or chargeable period; and

(b) in Malta, for any year of assessment

beginning in either case, before the entry into force of this Convention.

ARTICLE 30

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 calendar year. In such event, the Convention shall cease to have effect:

(b) 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;

(a) in Malta:

in respect of income tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which the notice is given.

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

DONE at London, this 12 day of May, 1994, in the English language.

JOSEF BONNICI

For the Government of Malta

STEPHEN DORELL

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

EXCHANGE OF NOTES

London
12th May, 1994

Your Excellency

I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

(a) *with reference to Articles 7 and 9,* it is understood that nothing contained therein shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including the determination of such liability by the exercise of discretion or the making of an estimate by the competent authority of that State in cases in which, from the information available to the competent authority of that State, it is not possible or practicable to ascertain the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of the said two Articles;

(b) *with reference to paragraph (9) of Article 11,* it is understood that the relevant institution, agency or instrumentality shall in the case of the United Kingdom be the Export Credits Guarantee Department and shall in the case of Malta be the Export Credit Guarantee Company Ltd;

(c) *with reference to paragraph (6) of Article 22,* it is understood that at the request of one competent authority both Contracting States shall enter into discussions about extending the period referred to in paragraph (5) at any time so that, in the event of an agreement to extend that period being reached, there should be no discontinuity in the application of the Article;

(d) *with reference to paragraph (2) of Article 23,* the provisions of this Convention shall not apply:

(i) to persons who are entitled to a special tax benefit under the Malta International Business Activities Act 1988 except for those persons who opt under Section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap. 123); or

(ii) to persons who and to the extent to which under the provisions of the Merchant Shipping Act 1973 are not subject to tax on the profits derived from the operation of ships in international traffic; or

(iii) to persons entitled to any special tax benefit in respect of distributions by a trust subject to the provisions of the Offshore Trusts Act 1988 given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Convention in its own right; or

(iv) to persons entitled to any special tax benefit under any substantially similar law subsequently enacted and which is agreed by the competent authorities of the Contracting States as included within the terms of paragraph (2) of Article 23 of this Convention.

If the foregoing proposals are acceptable to the Government of Malta, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of this Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

J.S. BUCK
for the Secretary of State
for Foreign and Commonwealth Affairs

Floriana
12th May, 1994

Your Excellency

I have the honour to acknowledge receipt of Your Excellency's Note of today which reads as follows:

"I have the honour to refer to the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malta for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains which has been signed today and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

(a) *with reference to Articles 7 and 9,* it is understood that nothing contained therein shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including the determination of such liability by the exercise of discretion or the making of an estimate by the competent authority of that State in cases in which, from the information available to the competent authority of that State, it is not possible or practicable to ascertain the profits to be attributed to a permanent establishment, provided that that law shall be applied, so far as the information available to the competent authority permits, consistently with the principles of the said two Articles;

(b) *with reference to paragraph (9) of Article 11,* it is understood that the relevant institution, agency or instrumentality shall in the case of the United Kingdom be the Export Credits Guarantee Department and shall in the case of Malta be the Export Credit Guarantee Company Ltd;

(c) *with reference to paragraph (6) of Article 22,* it is understood that at the request of one competent authority both Contracting States shall enter into discussions about extending the period referred to in paragraph (5) at any time so that, in the event of an agreement to extend that period being reached, there should be no discontinuity in the application of the Article;

(d) *with reference to paragraph (2) of Article 23,* the provisions of this Convention shall not apply:

(i) to persons who are entitled to a special tax benefit under the Malta International Business Activities Act 1988 except for those persons who opt under Section 41 of the said Act to be subject to the normal provisions of the Income Tax Act (Cap. 123); or

(ii) to persons who and to the extent to which under the provisions of the Merchant Shipping Act 1973 are not subject to tax on the profits derived from the operation of ships in international traffic; or

(iii) to persons entitled to any special tax benefit in respect of distributions by a trust subject to the provisions of the Offshore Trusts Act 1988 given that a trust as laid down in that Act is not vested with legal personality and therefore cannot benefit under the Convention in its own right; or

(iv) to persons entitled to any special tax benefit under any substantially similar law subsequently enacted and which is agreed by the competent authorities of the Contracting States as included within the terms of paragraph (2) of Article 23 of this Convention.

If the foregoing proposals are acceptable to the Government of Malta, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter, which shall enter into force at the same time as the entry into force of this Convention".

The foregoing proposals being acceptable to the Government of Malta, I have the honour to confirm that Your Excellency's Note and this Reply shall be regarded as constituting an agreement between the two Governments in the matter which shall enter into force at the same time as the entry into force of this Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

VINCENT GALEA
Commissioner of Inland Revenue
For the Government of Malta

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