



## ST. CHRISTOPHER AND NEVIS

### CHAPTER 20.22

### INCOME TAX ACT and Subsidiary Legislation

#### Revised Edition

showing the law as at 31 December 2017

This is a revised edition of the law, prepared by the Law Commission under the authority of the Law Commission Act, Cap. 1.03.

This edition contains a consolidation of the following laws—

#### INCOME TAX ACT

**Act 17 of 1966** ... in force 1st January 1967

Amended by: Act 20 of 1966

Act 12 of 1970

Act 5 of 1972

Act 19 of 1972

Act 13 of 1974

Act 7 of 1976

Act 13 of 1976

Act 63 of 1976

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Act 14 of 1980

Act 3 of 1982

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## CHAPTER 20.22 INCOME TAX ACT

AN ACT TO MAKE PROVISION FOR THE IMPOSITION OF A TAX ON INCOMES, AND TO PROVIDE FOR THE TAXATION OF CERTAIN CAPITAL GAINS AND TO REGULATE THE COLLECTION OF THAT TAX; AND TO PROVIDE FOR RELATED OR INCIDENTAL MATTERS.

### PART I PRELIMINARY

#### Short title.

1. This Act may be cited as the Income Tax Act.

#### Interpretation.

2. (1) In this Act, unless the context otherwise requires—

“approved pension fund” means a pension, provident or superannuation fund or scheme established by an employer for the benefit of his or her employees or their dependants, subject to the following conditions—

- (a) contributions made by the employer and by the employee are alienated from the employer and placed under the control of trustees who shall include representatives of both the employer and employees and at least one trustee who is neither the employer nor an employee;
- (b) the manner of investing the accumulated contributions has been approved by the Pension Fund (Investments) Board;
- (c) the trust under which the fund is created ensures—
  - (i) that the contributions accumulated in the fund shall in no circumstances be returnable to the employer; and
  - (ii) the benefit of the contributing employee shall normally take the form of a pension or annuity upon retirement; and
- (d) the fund has been approved by the Minister of Finance “as an approved pension fund” for the purposes of this Act;  
*(Inserted by Act 13 of 1974 – See also Act 5 of 1972)*

“assessable income” means the income from the sources described in section 3 computed in accordance with the provisions of Parts II, III, IV and V of this Act;

“body of persons” means any body politic, corporate, or collegiate and any company, fraternity, fellowship, or society of persons whether corporate or not corporate;

“capital expenditure” means the net expenditure after deducting any grants, subsidies or other payments received from third parties on account thereof;

“chargeable income” means the aggregate of the assessable income less any allowances due under section 30;

“Collector” means the Comptroller or any officer acting for or deputed by him or her;

“Commissioners” means the Commissioners of Income Tax;

- “the Commonwealth” shall be deemed to include those territories and their dependencies which are prescribed;
- “Commonwealth income tax” means any income tax charged under any law in force in any part of the Commonwealth other than the United Kingdom;
- “company” means any company incorporated or registered under any law for the time being in force in the State or any company incorporated or registered outside the State;
- “Comptroller” means the Comptroller of Inland Revenue;
- “Double Taxation Relief” means any relief or credit given in respect of Income Tax in any other State;
- “Governor-General” means the Officer for the time being administering the Government of the State, and includes the Minister during such time as that office exists;
- “land” includes all tenements and hereditaments and also all messuages, houses, buildings or other construction whether the property of any company or of any individual, and all trees growing or standing thereon;  
*(Inserted by Act 5 of 1972)*
- “Minister” means the Minister responsible for the subject of Finance;
- “Pension Fund (Investments) Board” means the Pension Fund (Investments) Board constituted under this Act;  
*(Inserted by Act 13 of 1974)*
- “person” includes a body of persons;  
*(Inserted by Act 13 of 1976)*
- “plant or machinery” excludes expenditure on loose plant, tools, containers, cases, china, glass, soft furnishings and similar objects of a short life or for which the cost of renewals is a deduction allowed in computing the profits;
- “prescribed” means prescribed by rules or regulations under this Act;
- “related persons” means—
- (a) a natural person and relative of that natural person;
  - (b) a trust and a person who is or may be a beneficiary in respect of that trust or whose relative is or may be a beneficiary;
  - (c) a partnership or company limited by shares and a member thereof who, together with shares or other membership interests held by persons who are related to such member under another paragraph of this definition owns 25% or more of the rights to income or capital of the partnership or company;
  - (d) a shareholder in a company limited by shares if the shareholder, together with shares held by persons who are related to such shareholder under another paragraph of this definition—
    - (i) controls 25% or more of the voting power in the company limited by shares; or
    - (ii) owns 25% or more of the rights to dividends or of the rights to capital; or



- (e) two companies, if a person, either alone or together with a person or persons who are related to such person under another paragraph of this definition—
  - (i) controls 25% or more of the voting power in both companies; or
  - (ii) owns 25% or more of the rights to dividends or of the rights to capital in both companies, and

for purposes of paragraphs (c), (d), and (e) of this definition, a person shall be treated as owning, on a *pro rata* basis, shares or other membership interests which are owned or controlled by such person indirectly through one or more interposed persons, and the expressions “related to” or a “person related to”, shall be construed accordingly;

*(Inserted by Act 10 of 2012)*

“remuneration” means—

- (a) wages, salary, leave-pay, fees, commissions, bonuses, gratuities or payment of a similar nature which an employee receives prior to, in the course of, or subsequent to his employment, and the value of any other benefit, monetary or otherwise, provided to an employee or to a person related to an employee, including contributions to a pension fund; and
- (b) payments or benefits given to a shareholder in return for services;

*(Inserted by Act 10 of 2012)*

“securities” has the same meaning as set out under the Securities Act, Cap. 21.16;

*(Inserted by Act 19 of 2005)*

“State” means the State of Saint Christopher and Nevis;

“tax” means the income tax imposed by this Act;

“tax benefit” includes any avoidance, postponement or reduction of any liability for tax.

*(Inserted by Act 10 of 2012)*

“trade” means any trade, manufacture, business, and any adventure or concern in the nature of trade, and shall include farming, market gardening, husbandry and the occupation of land for any commercial purpose;

“year of assessment” means the period of twelve months commencing on the first day of January in each year.

(2) References in this Act to “the Corporation rate of tax” or to “the income tax rate of tax” shall be construed and read as references to “the corporation rate of tax” or to “the income tax rate of tax”, as the case may be, prescribed by section 32 of this Act or to any rate of tax substituted for one or the other of such rates of tax by any amendment or replacement of the said section.

*(Inserted by Act 13 of 1976)*

## PART II

## IMPOSITION OF INCOME TAX

**Charge of income tax.**

3. (1) Income tax shall, subject to the provisions of this Act, be payable at the rate or rates specified hereafter for the year of assessment commencing on the 1st day of January, 1967, and for each subsequent year of assessment upon the income of any person accruing in or derived from the State or elsewhere and whether received in the State or not in respect of—

- (a) gains or profits from any trade, profession, or vocation, for whatever period of time such trade, profession or vocation may have been carried on or exercised;
- (b) gains or profits from any employment, including the estimated annual value of any quarters or board or residence or of any other allowance or benefit, but excluding passages to or from the State, granted in respect of employment, whether in money or otherwise:

Provided that in the case of passages granted for overseas leave this exemption shall not apply more often than once in every two years;

- (c) the annual value of land and improvements thereon used by or on behalf of the owner or used other than at full rental value by the occupier, for the purpose of residence or enjoyment, and not for the purpose of gain or profit, such annual value to be ascertained in the manner prescribed:

Provided that there shall be exempted the annual value of a newly constructed house, during such time as the house is occupied as a residence by the owner thereof—

- (i) but this exemption shall not be granted to, and does not apply in respect of, any one person for more than one house at the same time, and moreover shall only apply in respect of a house the cost of construction of which, in the opinion of the Comptroller, having regard to normal building costs prevailing at the time of its construction, would not exceed twenty-five thousand dollars, exclusive of the cost or value of the land;
- (ii) and this exemption, when applicable, shall be operative for a period of fifteen years beginning with the date of the completion of the newly constructed house:

And further provided that the exemption granted under the first proviso to this paragraph shall cease to apply in respect of a house where, in the opinion of the Comptroller, the cost of repairs, alterations or improvements made to the house when added to the cost of construction as determined under the said proviso exceeds twenty-five thousand dollars exclusive of the cost or value of the land;

- (d) dividends, interest or discounts;
- (e) any pension, charge or annuity;
- (f) rents, royalties, premiums and any other profits arising from property;
- (g) any annual gains or profits not falling under any of the foregoing heads:

Provided that in the case of income arising outside of the State which is earned income and which arises to a person who is not ordinarily resident in the State, or not domiciled in the State, the tax shall be payable on the amount received in the State:

Provided also that tax shall not be payable in respect of any income arising outside of the State and accruing to any person who is in the State for some temporary purpose only and not with any intention to establish his or her residence therein and who has not actually resided in the State at one or more times for a period equal in the whole to six months in the basic year; but so however that where any trade, profession or vocation is carried on or exercised partly within and partly outside the State by a resident individual whose home is in the State, the whole of the gains or profits from such trade, profession or vocation shall be deemed to have accrued in or to have been derived from the State.

*(Substituted by Act 12 of 1970)*

(2) Where the gain or profit is of a capital nature not being a gain or profit which falls within subsection (1) of this section or not being a gain or profit accruing from a trade, profession, vocation, office or employment and derives from a transaction relating to assets which are disposed of within one year of the date of acquisition of such assets such gain or profit shall be declared at the same time that a return of income is made and shall be subject to one half the rate of tax at which it would have been charged if such gain or profit were aggregated with any income chargeable under subsection (1) of this section:

Provided however that the maximum rate of tax on such gain or profit shall not exceed 20%.

*(Inserted by Act 5 of 1972)*

(3) This section shall not apply to income which accrues on or after 1st May, 1980 to any person (other than a company) liable under this section.

*(Inserted by Act 14 of 1980)*

#### **Basis of Assessment.**

4. (1) Tax shall be assessed for each year of assessment upon the total assessable income of any person for the basic year.

(2) Subject to the provisions of sections 68 and 69 the basic year shall be the period of twelve months ending on the 31st December immediately preceding the year of assessment:

Provided that where the Commissioners are satisfied that any person usually makes up the accounts of his or her trade, to some date other than the 31st day of December, they may permit the profits of that trade to be computed for the purposes of this Act upon the income of the year terminating on such date and that year shall accordingly be deemed to be the basic year:

Provided also that where such permission has been given in respect of any year of assessment the profits for each subsequent year of assessment shall be computed by reference to a basic year terminating on a like date:

Provided also that where any change occurs in the date to which accounts are made up the Commissioners may make such adjustment for any year as in their opinion is just and reasonable.

*(Amended by Act 20 of 1966)*

(3) Subject to the provisions of this Act, tax shall be assessable and assessed for any year of assessment for which income arose in the basic year from the sources

described in section 3 notwithstanding that no such income arose in the year of assessment.

(4) Where the calculation of chargeable income involves a receipt, an outgoing or any other amount paid or received not in cash but in the form of property, services, or other benefit, the fair market value of this property, services, or other benefit on the date the amount is taken into account for tax purposes, is used in determining the chargeable income.

*(Inserted by Act 10 of 2012)*

### **Transactions and Arrangements Between Related Persons and Associates.**

\*5. (1) In any arrangement, transaction or group of transactions between persons who are related or associated persons, the Comptroller may, by notice in writing—

- (a) distribute, apportion, or allocate amounts to be included or deducted in calculating income and foreign income tax paid between the persons as is necessary to reflect the chargeable income or tax payable that would have arisen for them if the arrangement had been conducted at arm's length;
- (b) re-characterise the source and type of any income, loss, amount, or payment derived, incurred, made or received under an arrangement, transaction or group of transactions the form of which does not reflect its substance or is classified as an avoidance arrangement;
- (c) disregard an arrangement, transaction or part of an arrangement or a transaction that does not have substantial economic effect or is classified as an avoidance arrangement.

(2) For the purposes of this Act, a company is associated with another company in a tax year if, at any time in the year—

- (a) one of the companies controls, directly or indirectly in any manner, the other;
- (b) both of the companies are controlled, directly or indirectly in any manner, by the same person or group of persons;
- (c) each of the companies is controlled, directly or indirectly in any manner, by a person and the person who so controlled one of the companies is related to the person who controls the other, and either of those persons owns, in respect of each company, not less than 25% of the issued shares of any class of the capital stock thereof; or
- (d) one of the companies is controlled, directly or indirectly in any manner, by a person and that person is related to each member of a group of persons that so controls the other company, and that person owns, in respect of the other company, not less than 25% of the issued shares of any class of capital stock thereof; or
- (e) each of the companies is controlled, directly or indirectly in any manner, by a related group and each of the members of one of the related groups is related to all of the members of the other related group, and one or more persons who are members of both related groups, either alone or together, owns, in respect of each company, not less than 25% of the issued shares of capital stock thereof.

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\* Sections 4A and 4B inserted by Act 10 of 2012 and renumbered. Following sections renumbered accordingly.

(3) For purposes of this section, references to the capital stock of a company include, in the case of a partnership, references to the partnership interests and, in the case of a trust, references to a beneficial interest in the trust.

*(Inserted by Act 10 of 2012)*

#### **Indirect Payments and Benefits.**

6. (1) For the purposes of this Act, the income of a taxpayer includes—

- (a) a payment that directly or indirectly benefits the taxpayer; and
- (b) a payment dealt with as the taxpayer directs,

which would have been income of the taxpayer if the payment had been made directly to the taxpayer.

(2) The deductions of a taxpayer include a payment made on behalf of the taxpayer or as the taxpayer directs which would have been a deduction of the taxpayer if the payment had been made directly by the taxpayer.

*(Inserted by Act 10 of 2012)*

### PART III

#### EXEMPTIONS

#### **Exemptions.**

7. (1) There shall be exempt from the tax—

- (a) the income of any local authority, trade union, or friendly society in so far as such income is not derived from a trade carried on by such local authority, trade union or friendly society;
- (b) the income of any statutory or registered building society;
- (c) the income of any ecclesiastical, charitable or educational institution of a public character in so far as such income is not derived from a trade carried on by such institution:

Provided that where a trade is carried on by a charity the profits of such trade shall be exempt if the profits are applied solely to the purposes of the charity and either—

- (i) the trade is exercised in the course of the actual carrying out of a primary purpose of the charity; or
  - (ii) the work in connection with the trade is mainly carried on by beneficiaries of the charity;
- (d) the emoluments payable to members of the permanent consular services of foreign countries in respect of their offices or in respect of services rendered by them in their official capacity;
  - (e) the emoluments payable from United Kingdom Government funds to members of Her Majesty's Forces and to persons in the permanent service of the United Kingdom Government in the State in respect of their offices under the United Kingdom Government;
  - (f) wound and disability pensions granted to members of Her Majesty's Forces;

- (g) gratuities granted to members of Her Majesty's Forces in respect of services rendered during war;
- (h) the income of the Government Savings Bank;
- (i) interest received by an individual resident in the State from the Saint Christopher Nevis and Anguilla National Bank Limited or from the Nevis Co-operative Banking Company Limited in respect of deposits of money received by any of the aforesaid banks for the benefit of such individual;  
*(Inserted as paragraph (ii) by Act 13 of 1974)*
- (j) the income of any Electricity Authority;
- (k) the incomes of Ministers of Religion derived from their occupation as such;
- (l) the sum of one thousand five hundred dollars from the allowance paid to members of the National Assembly and pensions paid to former members and officers of the National Assembly;  
*(Inserted by Act 5 of 1972 as paragraph (l))*
- \* (m) the income of any approved Pension Fund;  
*(Substituted by Act 13 of 1974)*
- (n) the income of the following funds established under section 5 of the Sugar Export Cess Act—
  - (i) the Sugar Industry Price Stabilisation Fund;
  - (ii) the Sugar Industry Rehabilitation Fund; and
  - (iii) the Sugar Industry Labour Welfare Fund;
- (o) benefits (including assistance or lump sum payments) paid out of any account of the Social Security Fund established under section 40 of the Social Security Act;  
*(Inserted by Act 13 of 1977)*
- (p) profits arising from the investment of the Social Security Fund;  
*(Inserted by Act 13 of 1977)*
- (q) the income of any other fund or body approved by the Minister;  
*(Inserted by Act 5 of 1972)*
- (r) any sum received by way of gratuity on termination of a contract of employment;
- (s) income arising from the business of shipping carried on by a person not resident in the State provided that the Comptroller is satisfied that an equivalent exemption from income tax is granted by the country in which such person is resident to persons resident in the State and, if that country is a country other than the United Kingdom, to persons resident in the United Kingdom;
- (t) income arising from trading securities other than by way of a business on an exchange licensed by the Eastern Caribbean Securities Regulatory Commission under the Securities Act, 2001.  
*(Amended by Act 19 of 2005)*

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\* Originally paragraph (m).

(2) The expression “business of shipping” in subsection (1)(t) means the business carried on by an owner of ships, and for the purposes of this definition the expression “owner” includes charterer.

(3) For the purposes of subsection (1) (t), a company shall be deemed to be resident in the country in which the central management and control of its business is situate:

Provided that nothing in this section shall be construed to exempt in the hands of the recipients any dividends, interests, bonuses, salaries or wages paid wholly or in part out of the income so exempted.

#### **Government loans.**

8. The Governor-General may, by Order published in the *Gazette*, provide that the interest payable on any loan charged on the public revenue of the State shall be exempted from the tax, either generally or only in respect of interest payable to persons not resident in the State and such interest shall as from the date and to the extent specified in the order be exempt accordingly.

*(Section 7 repealed by Act 6 of 2006, and section 8 has been renumbered as section 7)*

#### **Relief to hotel proprietors and pioneer manufacturers from income tax.**

9. (1) Notwithstanding any provisions to the contrary in this Act, where—

- (a) a licence has been granted under the Hotels Aid Act to any company to construct an hotel intended to contain when completed not less than thirty bedrooms; or
- (b) a licence has been granted under the Hotels Aid Act to any person or company other than a licence referred to in paragraph (a) of this subsection to construct an hotel; or
- (c) a licence has been granted to a pioneer manufacturer to carry on a pioneer enterprise under the Aid to Pioneer Industries Act,

then the following special provisions shall apply.

(2) The gains or profits arising during the periods specified below to any hotel or pioneer industry shall be exempt from tax—

- (a) in the case of a licence conforming to subsection (1)(a) of this section, for ten years;
- (b) in the case of a licence conforming to subsection (1)(b) of this section, for five years;
- (c) in the case of a licence conforming to subsection (1)(c) of this section, for five years, or such period up to ten years for which the licence is extended,

and such period of exemption is referred to in this section as the “tax holiday period”.

(3) The tax holiday period shall commence in the case of an hotel on the day on which it is first opened or used for business and in the case of a pioneer enterprise on the date specified as the production day, or from such other day as may be substituted by the Governor-General under the provisions of section 12 of the Aid to Pioneer Industries Act.

(4) During the tax holiday period no initial deductions, annual deductions or balancing deductions in respect of capital expenditure on an industrial building or structure or on any plant or machinery, shall be allowed:

Provided that after the expiration of the tax holiday period when such deductions fall to be allowed no initial deductions shall be made but the annual deductions shall be computed as if the capital expenditure incurred at any time up to the end of the basic year in which the last tax holiday period falls, less any realisations from such assets up to the end of such basic year, were incurred on the last day of such basic period.

(5) Subject to the provisions of section 12, the loss, if any, incurred during the tax holiday period after the deduction of any profits made in the same period, may be set off against the profits arising during the period or periods immediately following the tax holiday period.

(6) Where the person who receives exemption for a tax holiday period under this section is a company, such of the profits arising during such period as may be distributed to its members within two years of the end of such period, shall be exempt from the payment of tax in the hands of such members.

(7) Any person to whom this section applies may, within two years of the end of the tax holiday period, elect that this section shall not apply, whereupon the tax shall be computed without regard to this section for the whole period from the commencement of the tax holiday period and any necessary repayment or charge to tax shall be made for all the years concerned without regard to the time limits imposed by this Act.

(8) In this section, "realisations" include all money received from sale, insurance, scrap, compensation or any other recoveries where the asset concerned ceases to be used wholly or partly for the purpose of trade.

#### PART IV

##### COMPUTATION OF ASSESSABLE INCOME

###### **Deductions allowed.**

**10.** (1) For the purpose of computing the assessable income of any person there shall be deducted all outgoings and expenses wholly and exclusively incurred during the basic year by such person in the production of the income, including—

- (a) sums paid or payable by such person by way of interest upon money borrowed by him or her, where the Comptroller is satisfied that the interest was paid on capital employed in acquiring the income;
- (b) rent paid or payable by any tenant of land or buildings occupied by him or her for the purpose of acquiring the income;
- (c) any sum expended for the purpose of replacing any plant or machinery used in any trade, profession or vocation which has become obsolete after deducting therefrom any sum realised by the sale of the obsolete plant:

Provided that no such deduction shall be made when any initial deduction or annual deduction has been made in respect of such obsolete plant;

- (d) any sum expended for repair of premises, plant or machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil or article so employed;



- (e) bad debts incurred in any trade, profession or vocation, proved to the satisfaction of the Comptroller to have become bad during the basic year, and doubtful debts to the extent that they are respectively estimated to the satisfaction of the Comptroller to have become bad during the said year notwithstanding that such bad or doubtful debts were due and payable prior to the commencement of the said year:

Provided that all sums recovered during the said year on account of amounts previously written off or allowed in respect of bad or doubtful debts shall for the purposes of this Act be treated as receipts of the trade, profession or vocation for that year:

Provided further that any bad debts so deducted shall not exceed five per centum of the amount of the total of the accounts receivable at the end of the relevant accounting period;

*(Amended by Act 5 of 1972)*

- (f) any contribution to an approved pension or superannuation fund which is an ordinary annual contribution; and any contribution which is not an annual contribution shall be spread forward over such number of years as the Comptroller may deem reasonable having regard to the circumstances in which such contribution was made:

Provided that any refund of contributions by an approved pension fund to an employee before retirement shall be regarded as income of the basic year in which the refund is made, but where the refund is taxable at a substantially higher rate than that to which the employee was liable in previous years, the Comptroller may in his or her discretion vary the rate at which the refund would otherwise be taxable;

*(Substituted by Act 13 of 1974)*

- (g) contributions paid by an employer or by an employed person under the system of social security established under the Social Security Act;

*(Inserted by Act 13 of 1977)*

- (h) expenses of entertainment for trade or professional purposes, but limited to a sum wholly, exclusively and reasonably incurred having regard to the size and character of the particular trade or profession, and, where incurred by a Director or employee, to sums wholly, exclusively and necessarily incurred in the performance of the duties of the Office or Employment;

- (i) contributions paid by an employer under the system of National Housing established by the National Housing Corporation Act;

*(Inserted by Act 9 of 1996)*

- (j) annuities or other annual payments whether payable within or out of the State, as a charge on any property of the person paying the same by virtue of any deed or will:

Provided that no voluntary allowances or payment of any description shall be deducted;

*(Inserted by Act 12 of 1970)*

- (k) such other deductions (not being deductions of the kind disallowed by section 12) as may be prescribed;

*(Amended by 12 of 1970)*

- (l) subject to section 12, amounts paid or payable to a related person for administration fees, management fees or expenses, head office charges

and allocations, technical services, shared costs and other similar charges, royalties, patents, recharges, expense re-allocations, reimbursements of costs, payment for service and any other annual or periodic payment.

*(Inserted by Act 10 of 2012 and substituted by Act 2 of 2016)*

(2) The Governor-General may, by rules, provide for the method of calculating or estimating the deductions allowed under this section.

(3) The deduction allowed in respect of the total amount of the expenses paid to related persons, referred to in subsection (1) paragraph (1), for the year of assessment shall be limited to 5% of the gross sales or revenues of the taxpayer.

(4) For the purposes of subsection (3), persons who are related and associated persons shall be treated as a single person when calculating the deductions allowed.

*(Subsections (3) and (4) inserted by Act 10 of 2012)*

### **Special deductions for capital expenditure.**

**11.** (1) In computing the assessable income of a person engaged in a trade, profession or vocation there shall be allowed—

(a) a deduction (hereinafter called an initial deduction) of one fifth of the capital expenditure incurred during the basic year on—

(i) the erection, alteration or acquisition of a building or structure which is or is intended to be an industrial building or structure occupied for a trade specified in sub-section (6) of this section;

(ii) the provision, alteration or improvement of plant or machinery used or to be used for the purposes of a trade, profession or vocation;

(iii) the erection of a commercial building the construction of which commenced on or after the 1st day of March, 1994 and which is used for the purposes of a trade, profession or vocation;

*(Inserted by Act 2 of 1994)*

(b) a deduction (hereinafter called an annual deduction) of a reasonable amount for the exhaustion or wear and tear of—

(i) an industrial building or structure as is owned and used for a trade specified in subsection (6) of this section;

(ii) any plant or machinery as is owned by a person and used in a trade, profession or vocation;

(iii) any commercial building as is owned by a person and used in a trade profession or vocation:

*(Inserted by Act 2 of 1994)*

Provided that the total amount of deductions under paragraphs (a) and (b) shall in no case be allowed to an extent which would reduce the tax payable for any year of assessment to less than one half of the amount which would have been payable had no such deduction been allowed:

Provided also that any allowance under paragraphs (a) and (b) not allowed to be given by virtue of the foregoing proviso may be carried forward if so claimed and allowed to be deducted from subsequent profits provided that the amount of tax payable in any basic year will not be decreased by more than fifty per centum of what it would have been if these deductions had not been allowed.

*(Inserted by Act 5 of 1972)*

(2) The same deductions shall be allowed to a person who incurs the expenditure described in subsection (1) (a) of this section and—

- (a) leases the industrial building or structure to another person who occupies it for the purpose of a trade specified in subsection (6) of this section;
- (b) hires the plant or machinery to another person who uses it for the purpose of his or her trade, profession or vocation;
- (c) leases the commercial building to another person who uses it for the purposes of his or her trade, profession or vocation,  
*(Inserted by Act 2 of 1994)*

and where the deductions so allowed to a person who leases the building or hires the plant exceed the rent or hire received, relief shall be given to that person as a loss under section 12.

(3) Where such industrial building or structure or plant or machinery or commercial building is sold, destroyed or put out of use as being worn out, obsolete or otherwise useless or no longer required there shall in the basic period in which such event occurs—

- (a) where there are no sale, insurance, salvage or compensation moneys or where the written down value of the asset immediately before the event exceeds those moneys be made a deduction (hereinafter called a balancing deduction) of a sum equal to the written down value or as the case may be the excess over the said moneys;  
*(Amended by Act 2 of 1994)*
- (b) where the sale, insurance, salvage or compensation moneys exceed the written down value of the asset immediately before the event be made an addition (hereinafter called a balancing addition) to the profits as otherwise determined for the basic period of a sum equal to the amount of such excess:

Provided that a balancing addition shall not exceed the aggregate of any deduction granted under this section.

(4) No deduction shall be allowed for any year if the deduction, when added to the deductions allowed in previous years, will make the aggregate amount of the deductions exceed the capital expenditure.

(5) Where a commercial building or a building which is or was intended to be an industrial building or structure is not used or ceases to be used as such, then unless the building or structure has been so used for a period of not less than ten years any initial deductions granted shall be cancelled, and such additional assessments as are necessary shall be made without regard to the time limits imposed by this Act.  
*(Amended by Act 2 of 1994)*

(6) A building or structure shall be deemed to be an industrial building or structure for the purposes of this section where it is in use for the purposes of—

- (a) a trade carried on in a mill, factory, or other similar premises;
- (b) a transport, dock, water, refrigeration or electricity undertaking;
- (c) a trade which consists in the manufacture of goods or materials or the subjection of goods or materials to any process;

- (d) a trade which consists in the storage of goods or materials which are to be used in the manufacture of other goods or materials or to be subjected in the course of a trade to any process;
- (e) a trade which consists in the storage of goods or materials on their arrival by sea or air in any part of the State from any other part of the State or from outside the State;
- (f) a trade which consists in the carrying on of an hotel; or
- (g) a trade consisting in all or any of the following activities, that is to say, ploughing or cultivating land, or doing any other agricultural operation on land, rearing of livestock, or any other form of husbandry,

and in particular the said expression includes any building or structure provided by the person carrying on such a trade or undertaking for the welfare of workers employed in that trade or undertaking and in use for that purpose.

(7) Subsection (6) of this section shall apply in relation to a part of a trade or undertaking as it applies to a trade or undertaking:

Provided that where part only of a trade or undertaking complies with the conditions set out in the said provisions, a building or structure shall not, by virtue of this subsection, be an industrial building or structure unless it is in use for the purposes of that part of that trade or undertaking.

(8) Notwithstanding anything in subsections (6) and (7) of this section, but subject to the provisions of subsection (9) of this section, the expression “industrial building or structure” does not include any building or structure in use as, or as part of, a dwelling house, retail shop, showroom, or office or for any purpose ancillary to the purposes of a dwelling house, retail shop, showroom or office:

Provided that the provisions of this subsection shall not apply in respect of a building or structure in use primarily for the purposes of a trade which consists in the carrying on of an hotel.

(9) Where part of the whole of a building or structure is, and part thereof is not, an industrial building or structure, and the capital expenditure which has been incurred on the construction of the second mentioned part is not more than one-tenth of the total capital expenditure which has been incurred on the construction of the whole building or structure, the whole building or structure and every part thereof shall be treated as an industrial building or structure.

(10) In this section—

- (a) where the building or structure is not used as an industrial building or structure in the same basic period as that in which any expenditure was first incurred the expression “incurred during the basic year” means the total of the expenditure incurred in the years up to and including such basic year;
- (b) “written down value” means the remainder of the capital expenditure after deducting therefrom any initial deductions and all annual deductions.

**\*Deductions not to be allowed.**

**12.** (1) For the purpose of computing the assessable income of any person no deduction shall be allowed in respect of—

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\*Section 10(1) came into force 1st day of June 2016.

- (a) domestic or private expenses including *inter alia*—
  - (i) the cost of travelling between residence and place of business;
  - (ii) the rent of any premises, owned and used in connection with the carrying on by him or her of his or her trade, profession or vocation;
  - (iii) any remuneration, or interest on capital, paid or credited to himself or herself;
  - (iv) the cost price of any goods taken out of the business for the use of the proprietor or any partner or their families;
- (b) any disbursements or expenses not being money wholly and exclusively laid out or expended for the purpose of acquiring the income;
- (c) any capital withdrawn or any sum employed or intended to be employed as capital, except in the case of subscriptions paid by persons engaged in trade to such public appeals as may be prescribed;
- (d) any capital employed in improvements;
- (e) any sum recoverable under an insurance or contract of indemnity;
- (f) rent of or cost of repairs to any premises or part of premises not paid or incurred for the purpose of producing the income;
- (g) any amounts paid or payable for income tax or surtax either within the State or without the State;
- (h) any sum recoverable under an insurance contract of indemnity;  
*(Inserted by Act 5 of 1972)*
- (i) any amount, paid or payable in respect of foreign income tax except in accordance with the provisions of this Act or of any double taxation arrangements entered into with the foreign country;  
*(Inserted by Act 5 of 1972)*
- (j) sums paid by any person by way of interest upon any money borrowed by that person for use in the production of income unless—
  - (i) the person receiving such interest is chargeable to tax; or
  - (ii) such interest is exempt in the hands of the person entitled to receive it by virtue of the provisions of this Act or any other enactment;  
*(Inserted by Act 5 of 1972)*
- (k) bad debts not incurred in trading;  
*(Inserted by Act 5 of 1972)*
- (l) any wages, salary, leave-pay, fee, commission, bonus, gratuity or any other perquisite or any other payment which an employee of a company receives in the course of his or her employment or the value of any benefit to such employee or to any member of his or her family in excess of an amount of ninety thousand dollars per annum.  
*(Substituted by Act 7 of 2016)*
- (m) any remuneration paid to an employee or shareholder that is in excess of the fair market value of the services provided to the taxpayer by the employee or shareholder;

- (n) any remuneration paid to an employee or shareholder in the tax year that is in excess of the amount of seventy-five thousand dollars stated in paragraph (1);
- (o) any expenditure where the taxpayer is unable to provide sufficient documentation and other proof to demonstrate that the expenditure was wholly and exclusively incurred in the production of taxable income;
- (p) any expenditure or portion of an expenditure that is incurred for the purpose of, or is attributable to, earning income which is exempt from tax;
- (q) a fine or similar penalty paid to government or any statutory body for breach of any law;
- (r) any provisions, impairments reserves, except for those specifically allowed in this Act; or
- (s) in respect of amounts paid to a related person, no amount in excess of the lesser of—
  - (i) the amount of aggregate expense paid to the related person; or
  - (ii) the fair market value of the service provided by the related person.

*(Inserted by Act 10 of 2012)*

(2) Where an employee or shareholder receives remuneration in a tax year from two or more associated companies, the amount deductible by way of remuneration for that employee in that tax year by all the associated companies shall not be in excess of the amount of seventy-five thousand dollars stated in paragraph (1) of subsection (1).

(3) Where the total remuneration exceeds the amount stated in paragraph (1) of subsection (1), the amount deductible by each associated company shall be calculated on the following basis:

$M \times A/B$ ,

where “M” is the maximum amount stated in paragraph (1), “A” is the amount of remuneration paid to the employee or shareholder by the company in question, and “B” is the total remuneration paid to the employee or shareholder by the associated companies.

*(Inserted by Act 10 of 2012)*

### **Right to carry forward losses.**

**13.** (1) Where a person has in any trade, profession or vocation carried on by him or her either solely or in partnership, sustained a loss (to be computed in like manner as profits or gains under the provisions of this Act) in respect of which relief has not been wholly given under any other provision of this Act he or she may claim that any portion of the loss for which relief has not been so given shall be carried forward, and as far as may be, deducted from or set off against the amount of profits or gains on which he or she is assessed under this Act in respect of that particular trade, profession, or vocation in which the losses were incurred:

Provided that in so far as relief of any loss has been given to any person under this section that person shall not be entitled to claim relief in respect of that loss under any other provision of this Act:

Provided also that the amount of loss allowed to be set off in computing the chargeable income of any year shall not be set off in computing the chargeable income of any other year:

and provided also that losses so carried forward shall not be taken into account later than five years after the basic year in which they were incurred.

(2) On the application of this section to a loss sustained by a partner in a partnership “the amount of profits or gains on which he or she is assessed” shall, in respect of any year, be taken to mean such portion of the amount on which the partnership is assessed under this Act in respect of the trade, profession or vocation as he or she would be required under this Act to include in a return of his or her total income for that year.

(3) Where under the provisions of this section a person is entitled to have the amounts of any loss set off in computing the chargeable income of any year the amount of such set off shall in no case extend so as to reduce the total income tax paid or payable by him or her for that year to less than one half of the amount it would have been if the amount of the set off had not been allowed.

*(Substituted by Act 5 of 1972)*

### **Insurance and Shipping Companies.**

**14.** (1) Notwithstanding anything to the contrary contained in this Act, it is hereby provided that—

- (a) in the case of an insurance company (other than a life insurance company) where the gains or profits accrue in part outside the State, the gains or profits on which tax is payable shall be ascertained by taking the gross premiums and interest and other income received or receivable in the State (less any premiums returned to the insured and premiums paid on re-insurances); and deducting from the balance so arrived at a reserve for unexpired risks at the percentage adopted by the company in relation to its operations as a whole for such risks at the end of the basic year and adding thereto a reserve similarly calculated for unexpired risks outstanding at the commencement of the basic year, and from the net amount so arrived at deducting the actual losses (less the amount recovered in respect thereof under re-insurance), the agency expenses in the State and a fair proportion of the expenses of the head office of the company;
- (b) in the case of a life insurance company, whether mutual or proprietary, the gains or profits on which tax is payable shall be the investment income less the management expenses (including commission):

Provided that where such a company received premiums outside the State, the gains or profits shall be the same proportion of the total investment income of the company as the premiums received in the State bore to the total premiums received after deducting from the amount so arrived at the agency expenses in the State and a fair proportion of the expenses of the head office of the company;

- (c) in the case of a ship owner, the gains or profits of his or her business as ship owner shall, if he or she produces or causes to be produced to the Commissioners the certificate mentioned in subsection (2) be taken to be a sum bearing the same ratio to the sums payable in respect of fares or freight for passengers, goods, or mails shipped in the State as

his or her total profits for the relevant accounting period shown by that certificate bear to the gross earnings for that period.

(2) The certificate referred to in subsection (1)(c) shall be a certificate by the Taxing Authority of the place in which the principal place of business of the ship owner is situated and shall state—

- (a) that the ship owner has furnished to the satisfaction of that Authority an account of the whole of his or her business; and
- (b) the ratio of the gains or profits for the relevant accounting period as computed according to the Income Tax Law of that place (after deducting interest on any money borrowed and employed in acquiring the gains and profits) to the gross earnings of the ship owner's fleet or vessel for that period.

(3) If the gains or profits of a ship owner have, for the purpose of assessment in the State under this Act, been computed on any basis other than the ratio of the gains or profits shown by a certificate as provided in subsection (2) and an assessment has been made accordingly, the ship owner shall, upon production of such a certificate at any time within two years from the end of the year of assessment be entitled to such adjustment as may be necessary to give effect to the said certificate and to have any tax paid in excess refunded.

(4) In subsections (1)(c), (2) and (3), the expression "ship owner" means an owner or charterer of ships whose principal place of business is situated outside the State, but in a part of the Commonwealth.

#### **Trading by non-residents.**

15. (1) Where a person not resident in the State (hereinafter in this section referred to as a non-resident person) carries on a business with a resident person and it appears to the Comptroller that owing to the close connection between the resident person and the non-resident person, and to the substantial control exercised by the non-resident person over the resident person, the course of business between those persons can be so arranged and is so arranged that the business done by the resident person in pursuance of his or her connection with the non-resident person produces to the resident person either no profits or less than the ordinary profits which might be expected to arise from that business, the non-resident person shall be assessable and chargeable to tax in the name of the resident person as if the resident person were an agent of the non-resident person.

(2) Where it appears to the Comptroller that the true amount of the gains or profits of any non-resident person chargeable with tax in the name of a resident person cannot in any case be really ascertained, the Comptroller may, if he or she thinks fit, assess and charge the non-resident person on a fair and reasonable percentage of the turnover of the business done by the non-resident person through or with the resident person in whose name he or she is chargeable as aforesaid, and in such case the provisions of this Act relating to the delivery of returns or particulars by persons acting on behalf of others shall extend so as to require returns or particulars to be furnished by the resident person of the business so done by the non-resident person through or with the resident person, in the same manner as returns or particulars of income to be charged are to be delivered by persons acting for non-resident persons:

Provided that the amount of the percentage shall in such case be determined having regard to the nature of the business.



(3) Nothing in this Act shall render a non-resident person chargeable in the name of a broker or general commission agent, or other agent when such broker, general commission agent or agent is not an authorised person carrying on the regular agency of the non-resident person or a person chargeable as if he or she were an agent in pursuance of subsections (1) and (2) of this section, in respect of gains or profits arising from sales or transactions carried out through such a broker or agent.

(4) The fact that a non-resident person executes sales or carries out transactions with another non-resident person in circumstances which would make him or her chargeable in pursuance of subsections (1) and (2) of this section in the name of a resident person shall not of itself make him or her chargeable in respect of gains or profits arising from those sales or transactions.

(5) Where a non-resident person is chargeable to tax in the name of any attorney, factor, agent, receiver, branch, or manager, in respect of any gains or profits arising from the sale of goods or produce manufactured or produced out of the State by the non-resident person, the person in whose name the non-resident person is so chargeable may, if he or she thinks fit, apply to the Comptroller to have the assessment to tax in respect of those gains or profits made or amended on the basis of the profits which might reasonably be expected to have been earned by a merchant or, where the goods are retailed by or on behalf of the manufacturer or producer, by a retailer of the goods sold, who had bought from the manufacturer or producer direct, and, on proof to the satisfaction of the Comptroller of the amount of the profits on the basis aforesaid, the assessment shall be made or amended accordingly.

#### **Approved pension funds and employees contribution.**

**16.** (1) Any sum contributed by an employer in accordance with the terms of an approved pension fund in respect of an employee whose remuneration is deductible in compiling the employer's gains or profits for the purposes of this Act, may also be deducted in compiling those profits or gains:

Provided that—

- (a) no allowance shall be given in excess of 5 per cent of that part of the earnings of the employee in respect of which contributions are to be made under the rules of the approved pension fund, or two thousand dollars whichever is the less; and
- (b) contributions other than ordinary annual contributions shall be treated for the purpose of this section as the Comptroller may direct, either as an expense incurred in the year in which the sum is paid or as an expense to be spread over such number of years as the Comptroller may deem reasonable having regard to the circumstances in which such contributions were made.

(2) Any sum contributed by an employee in accordance with the terms of an approved pension fund shall be deductible in computing the gains or profits from his or her employment for the purposes of this Act:

Provided that the provisions to subsection (1) of this section shall apply *mutatis mutandis* to contributions made by an employee.

*(Substituted by Act 13 of 1974)*

#### **Constitution of Pensions Fund (Investments) Board.**

**17.** (1) There shall be established a Board to be called the Pensions Fund (Investments) Board.

(2) The Board shall consist of the Financial Secretary, Ministry of Finance, or his or her nominee, the Managing Director of the St. Kitts-Nevis-Anguilla National Bank Limited, the Accountant-General and such other persons being not less than four in number, as the Minister shall appoint to be members thereof.

(3) The Board shall be appointed annually in the month of January, and such appointment shall be valid until the 31st day of January of the succeeding year, unless a new Board has been previously appointed:

Provided that any vacancy occurring during the course of the year may be filled by a new appointment.

(4) If any member of the Board shall absent himself or herself from the State for a longer period than one month without the permission of the Minister being first obtained, his or her seat shall *ipso facto* become vacant.

(5) The Financial Secretary, Ministry of Finance or his or her nominee and three other members of the Board shall form a quorum.

(6) The function of the Board shall be to review annually the investments made by approved pension funds and to give directions regarding the nature of investments to be held by such funds, having regard in the course of their review to the need to procure for employees the best possible benefits upon retirement, and to the desirability that funds should, in so far as it is reasonably practicable be invested within the State.

*(Inserted by Act 13 of 1974 as section 15A and is now section 17)*

#### **Books of account to be kept.**

\*18. (1) Every person carrying on business and every person who is or may be required by this Act to collect or pay tax or other amount shall keep in the English Language proper records and books of account including an annual inventory in Saint Christopher and Nevis in such form and containing such information as will enable the taxes payable under this Act or the taxes or other amounts that should have been withheld or collected to be determined.

(2) Where a person fails to keep proper records and books of account for the purpose of this Act the Comptroller may require him or her to keep such records and books of account as he or she may specify and that person shall thereafter keep records and books of account so required.

(3) Every person required by this section to keep records and books of account shall retain every such record or book of account and every account, voucher or other record necessary to verify such record or book of account until written permission for their disposal is obtained from the Comptroller.

(4) There shall be excepted from the operation of this section all retail shopkeepers whose gross sales do not on average exceed one thousand dollars per week.

*(Substituted by Act 7 of 1992)*

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\* Originally section 16.

## PART V

## PERSONS ASSESSABLE

**Wife's income.**

\*19. The income of a married woman living with her husband shall, for the purposes of this Act, be deemed to be the income of the husband, and shall be assessed in the name of her husband and not in her name nor in that of her trustee:

Provided that that part of the total amount of tax charged upon the husband which bears the same proportion to that total amount as the amount of income of the wife bears to the amount of the total income of the husband and wife may, if necessary, be collected from the wife, notwithstanding that no assessment has been made upon her.

**Deceased person.**

†20. (1) Where any person dies during a basic year and such person would, but for his or her death, have been chargeable to tax for the corresponding year of assessment or for any of the six years preceding such year of assessment, the personal representative of such person shall, for any year for which no assessment has been made, or for any additional assessment made under section 58, be liable to and charged with the payment of the tax with which such person would have been chargeable, and shall be answerable for doing all such acts, matters and things as such person, if he or she were alive, would be liable to do under this Act.

(2) Where in the circumstances envisaged in subsection (1) of this section the allowances and rates of tax have not been fixed for any year a personal representative who wishes to distribute the estate, having furnished to the Comptroller any returns and information required, may agree with the Comptroller the tax due on the basis of the allowances and rates in force for the last year for which they have been fixed and shall pay such tax before he or she distributes the estate.

**Partnerships.**

‡21. Where a trade, profession or vocation is carried on by two or more persons jointly—

- (a) the income of any partner from the partnership shall be deemed to be the share to which he or she was entitled during the basic year in the income of the partnership (such income being ascertained in accordance with the provisions of this Act) and shall be included in the return of income to be made by such partner under the provisions of this Act;
- (b) the precedent partner, that is to say, the partner who of the partners is resident in the State—
  - (i) is first named in the agreement of partnership; or
  - (ii) if there be no agreement, is named singly or with precedence to the other partners in the usual name of the firm; or
  - (iii) is the precedent acting partner, if the partner named with precedence is not an acting partner,

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\* Originally section 17.

† Originally section 18.

‡ Originally section 19.

shall make and deliver a return of the income of the partnership for any year, such income being ascertained in accordance with the provisions of this Act, and declare therein the names and addresses of the other partners in the firm together with the amount of the share of the said income to which each partner was entitled for that year; and where no partner is resident in the State, the return shall be made and delivered by the attorney, agent, manager, or factor of the firm resident in the State.

#### **Chargeability of trustees, etc.**

\*22. (1) A receiver, trustee, guardian, curator, or committee, having the direction, control or management of any property or concern on behalf of any person, shall be assessed to tax in respect of the income derived from such property or concern in like manner and to the like amount as such person would be assessable if he or she had received such income, and every such receiver, trustee, guardian, curator or committee shall be answerable for doing all matters and things required to be done under this Act for the purpose of assessment and payment of tax.

(2) Any other trustee acting under a will, disposition or settlement who is in receipt of income to be paid to two or more beneficiaries, or one or more where there is a right vested in the trustee to apply or distribute income at his or her discretion, shall be answerable for doing all matters and things required to be done under this Act for the purpose of assessment of tax and shall be assessed in his or her own name in respect of the income arising to the trust.

(3) Nothing in this section shall affect the liability of any person represented by any such receiver, trustee, guardian, curator or committee to be himself or herself charged to tax in his or her own name.

#### **Chargeability of agent of person residing out of the State.**

†23. A person not resident in the State whether a citizen of the State or not, shall be assessable and chargeable in the name of his or her trustee, guardian, curator or committee or of any attorney, factor, agent, receiver, branch or manager, whether such attorney, factor, agent, receiver, branch or manager has the receipt of the income or not, in like manner as such non-resident person would be assessed and charged if he or she were resident in the State and in the actual receipt of such income.

#### **Acts, etc. to be done by trustees.**

‡24. The person who is chargeable to tax under sections 22 and 23 shall be answerable for all matters required to be done by virtue of this Act for the assessment of the income of any person for whom he or she acts and for the payment of the tax chargeable thereon.

#### **Agents, etc. of non-residents to be assessed.**

§25. Any resident agent, trustee, mortgagor or other person who transmits rent, interest or income derived from any other source within the State to a non-resident person shall be deemed to be the agent of such non-resident person and shall be assessed and shall pay the tax accordingly.

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\* Originally section 20.

† Originally section 21.

‡ Originally section 22.

§ Originally section 23.

**Indemnification of representative.**

\*26. Every person answerable under this Act for the payment of tax on behalf of another person may retain out of any money coming to his or her hands on behalf of such other person so much thereof as shall be sufficient to pay such tax, and shall be and is hereby indemnified against any person whatsoever for all payments made by him or her in pursuance and by virtue of this Act.

**Income derived from property transferred to minors.**

†27. (1) Where a person transfers property to a minor, otherwise than in exchange for valuable and sufficient consideration, either directly or indirectly or through the intervention of a trust or by any means whatsoever, such person shall nevertheless, during the period of the minority of the transferee be liable to be assessed on the income derived from such property, or from property substituted therefor, as if such transfer had not been made.

(2) Where such a transfer has been made as is envisaged in subsection (1) of this section then subsequent to such period of minority unless the Comptroller is satisfied that such transfer was not made for the purpose of evading the tax imposed by this Act the transferor shall continue to be assessed in respect of the income derived from such property or from property substituted therefor, as if such transfer had not been made.

(3) Where in the case of any transfer covered by this section the transferee has in fact paid or suffered any tax in respect of the income then in ascertaining the total tax chargeable on the transferor in respect of his or her own income and that charged on him or her under this section an allowance shall be made equal to the tax paid or suffered already by the transferee.

**Income of property transferred in trust to be income of transferor in certain cases.**

‡28. (1) Where a person transfers property in trust and provides that the corpus of the trust shall revert either to the transferor or to such person as he or she may determine at a future date, or where a trust provides that during the lifetime of the transferor no disposition or other dealing with the trust property shall be made without the consent, written or otherwise, of the transferor, such person shall nevertheless be liable to be taxed on the income derived from the property transferred in trust, or from property substituted therefor, as if such transfer had not been made.

(2) In this section “disposition” includes any trust, grant, covenant, agreement or arrangement.

**Apportionment of profits of certain companies among members.**

29. (1) With a view to preventing the avoidance or reduction of tax it is hereby enacted that where it appears to the Comptroller that a company has not distributed to its shareholders as dividends within nine months of the end of any year or shorter accounting period, a reasonable proportion of its total income from all sources which are assessable to tax, the Comptroller may, at any time within six years of the end of such accounting period, direct that such proportion shall be deemed to have been paid as dividend to its members for such period.

(2) This section shall not apply to any company unless—

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\* Originally section 24.

† Originally section 25.

‡ Originally section 26. Note: Original section 27 repealed by Act 13 of 1976

- (a) not more than five persons together exercise control, directly or indirectly, over the company's affairs;
- (b) not more than five persons possess or are entitled to acquire the greater part of the issued share capital; or
- (c) if the whole of the total income was so deemed to be dividend not less than 50% thereof would be deemed to be the income of not more than five persons:

Provided that for the purposes of this section persons who are relatives of one another, persons who are nominees of any other person together with that other person, persons in partnership, and persons interested in any shares or obligations of the company which are subject to any trust or are part of the estate of a deceased person, shall respectively be treated as a single person.

(3) For the purposes of subsection (2), "relative" means husband, wife, ancestor, lineal descendant, brother or sister.

(4) In having regard to what is a reasonable proportion, the Comptroller may disregard all sums connected with the repayment of debt or connected with any fictitious or artificial transaction.

(5) The Comptroller may require a company, by notice in writing, to produce within a time specified its balance sheets and accounts and such further particulars as he or she may require including particulars of the membership of the company.

(6) Where a company fails to furnish any or all of the particulars required within the specified time, the Comptroller may to the best of his or her judgment estimate the reasonable part and issue a direction accordingly.

(7) In issuing any direction under this section the Comptroller shall—

- (a) issue it to the company in writing;
- (b) specify the reasonable proportion as a sum or a proportion of the total income, or as a percentage rate of dividend;
- (c) specify the date on which the dividend shall be deemed to have been paid.

(8) Where a company having furnished such particulars as the Comptroller requires, objects to any direction issued by him or her, it may within fifteen days of the receipt of the direction appeal to the Commissioners, whereupon the provisions in this Act relating to objections and appeals shall apply.

(9) Where a direction has been issued, then in computing the total assessable income of any member of the company, his or her share of the reasonable proportion, as determined on appeal when necessary, shall be included in the computation of the total assessable income of that member and the appropriate relief corresponding to that given for a dividend under section 35 shall be made, and any dividends which have been paid or which may be paid in the future out of the reasonable proportion shall be disregarded.

(10) Any additional tax which may become chargeable and leviable under this section may in default of payment by the member be charged on and levied from the company.

\*PART VI

PERSONAL ALLOWANCES

**Allowances for individuals.**

**30.** (1) For the purpose of this section, the expression “earned income” means any income arising in respect of any gains or profits immediately derived by the individual from any trade, profession, employment or vocation carried on or exercised by him or her either as an individual or in the case of a partnership as a partner personally acting therein, or in respect of any pension, superannuation or other allowance given in respect of past services of the individual or of the husband or parent of the individual or given to the individual in respect of the past services of any deceased person whether the individual or husband or parent of the individual shall have contributed to such pension, superannuation or other allowance or not;

(2) For the purpose of ascertaining the chargeable income of any individual who is resident or a British Subject and who has completed a return and given the prescribed particulars there shall be allowed an allowance from the total assessable income of—

- (a) one-tenth of the net total of the earned income assessed after making any set-off for a loss under section 12, provided that such allowance shall not in the case of any individual exceed seven hundred and fifty dollars;
- (b) the sum of one thousand two hundred dollars in the case of an individual.

*(Amended by Act 5 of 1972)*

(3) In ascertaining the chargeable income of an individual who proves to the satisfaction of the Comptroller that he has or had during the basic year his wife living with him or wholly maintained by him and that he is not entitled in computing the amount of his income for that year for the purpose of this Act to make deductions in respect of the sums paid for the maintenance of his wife under paragraph (a) of subsection (4) of this section, there shall be allowed a deduction of seven hundred and fifty dollars.

*(Amended by Act 5 of 1972)*

(4) In ascertaining the chargeable income of an individual who proves to the satisfaction of the Comptroller that he had during the year immediately preceding the year of assessment paid—

- (a) a maintenance or separation allowance to his wife in accordance with the terms of a registered deed of separation or an order of any Court of competent jurisdiction; or
- (b) alimony to a previous wife whose marriage with him has been dissolved by any Court of competent jurisdiction,

there shall be allowed a deduction of such maintenance or separation allowance or such alimony.

(5) In ascertaining the chargeable income of any individual who proves to the satisfaction of the Comptroller that he or she has or had a child or children living during the basic year there shall be allowed a deduction for each such child as follows—

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\* NOTE: As a result of renumbering sections 18 to 28, sections 29 and 30 have been renumbered accordingly.

- (a) if the child is under the age of sixteen, the sum of four hundred dollars;
- (b) if the child is of the age of sixteen or over but under the age of twenty-five and receiving full time education at any college, school or other educational establishment not being a university or other institution of higher learning, the sum of four hundred and fifty dollars;
- (c) if the child is of the age of sixteen or over but under the age of twenty-five and receiving full time instruction at any University or other institution of higher learning or is undergoing full time training lasting not less than two years for a trade or vocation the sum of seven hundred and twenty dollars;
- (d) if the individual proves to the satisfaction of the Comptroller that for the basic year he or she had the custody of or maintained a child at his or her own expense, and that no other individual is entitled to the allowance under this paragraph in respect of the same child, or that such other individual has relinquished claim thereto then such first-named individual shall be entitled to the appropriate allowance provided in paragraphs (a), (b) and (c) of this subsection;
- (e) where two or more individuals are entitled to an allowance in respect of the same child, the allowance shall be apportioned as the claimants may agree but in any other case it shall be proportionate to the amount or value of the provision made by them respectively for the basic year, provided that such allowance to two or more individuals shall not exceed in the aggregate the sum provided in paragraph (a) or paragraph (b) or paragraph (c) as the case may be, of this subsection in respect of each such child:

Provided that the allowance shall be reduced by the excess where the income of the child in his or her own right exclusive of any scholarship, bursary or similar educational endowment exceeds two hundred and eighty-eight dollars:

Provided also that the expression "child" in this subsection shall include a step-child and an adopted child, or a child born out of wedlock living with and maintained by the person charged:

*(Amended by Act 19 of 1983)*

Provided further that subject to the provisions of this section, the putative father of an illegitimate child in respect of whom an order for maintenance has been made by a Court of competent jurisdiction shall be entitled to a deduction not exceeding the amount actually paid during the basic year in accordance with the terms of the said Order.

*(Amended by Act 5 of 1972)*

(6) In ascertaining the chargeable income of an individual who proves to the satisfaction of the Comptroller that he or she had been living with him during the basic year any person being a relative of his or of his wife, who is incapacitated by old age or infirmity from maintaining himself or herself, or being his or his wife's mother whether incapacitated or not, or for whose maintenance though not living with him he has provided, and whose income from all sources does not exceed two hundred and forty dollars, there shall be allowed a deduction of two hundred dollars:

Provided that where two or more persons jointly maintain any such person as aforesaid, the allowance to be made under this subsection shall be apportioned between them in proportion to the amount or value of their respective contributions towards the maintenance of such person:



Provided further that this subsection shall apply to a claimant being a female person as it applies to a claimant being a male person with the substitution of the word "husband" for the word "wife".

(7) In subsection (6), the expression "relative" means a person connected by blood or affinity and includes any person of whom the individual in question had the custody, and whom he or she maintained at his or her own expense.

*(Amended by Act 5 of 1972)*

(8) In ascertaining the chargeable income of an individual who proves to the satisfaction of the Comptroller, that he has, during the basic year, paid—

(a) any premium or premiums on a policy or policies of insurance on his life or the life of his wife in an Insurance Company registered in the State and which has more than 50% of its issued capital owned by residents of the State or an Insurance Company operating within the State under the terms of the Insurance Act, provided however that the provisions of this paragraph only affect policies taken out after the passing of the said Insurance Act; or

*(Substituted by Act 5 of 1972)*

(b) a contribution to a Widows' or Orphans' Pension Fund or to such funds and schemes as the Governor-General may approve,

there shall be allowed a deduction of the amount of such premium or premiums and of such contributions as aforesaid:

Provided—

(i) that in the case of a policy securing a capital sum on death (whether in conjunction with any other benefit or not) the amount of the deduction allowed shall not exceed seven per centum of the actual capital sum assured, and in calculating any such capital sum, no account shall be taken of any sum payable on the happening of any other contingency, or the value of any premiums agreed to be returned, or of any benefit by way of bonus, or otherwise, which is to be or may be received either before or after death, either by the person paying the premium, or by any other person, and which is not the sum actually assured;

(ii) that no such deduction shall be allowed in respect of any such annual amount of premium or contribution beyond an amount equal to one-sixth part of the chargeable income of such person estimated in accordance with the provisions of this Act before making the deductions specified in this section.

(9) In ascertaining the chargeable income of any person there shall be allowed a deduction of the amount paid by such person during the basic year in respect of annual amounts payable under a covenant for a period of at least five consecutive years in favour of any charitable, religious or educational institution of a public character approved for such purpose by the Governor-General.

(10) The deductions mentioned in subsections (2), (3), (4), (5), (6) and (8) of this section shall be allowed in the case of an individual not resident in the State only if he or she satisfies the Comptroller that he or she is a British Subject:

Provided that in such a case no deductions shall be allowed so as to reduce the amount of the tax payable below an amount which bears the same proportion to the amount which would be payable if the tax were chargeable on the total income from all sources including income which is not subject to tax charged in the State as the

amount of the income subject to tax in the State bears to the amount of the total income from all sources.

(11) In ascertaining the chargeable income of an individual whose total income includes any earned income of his wife, the deduction to be allowed under subsection (3) of this section shall be increased by the amount of such earned income or two hundred and fifty dollars, whichever is the less:

Provided that this additional allowance shall not be given where the wife is in the husband's employ or in the employ of a business or undertaking in which she or her husband is a major owner or shareholder or she and her husband together are major owners or shareholders.

*(Inserted by Act 5 of 1972)*

### **Special exemption.**

**31.** (1) Subject to subsection (3), any individual who—

(a) is either—

(i) the purchaser of a lot of land; or

(ii) the lessee of land upon which an hotel has been erected or is to be erected as part of a scheme of development certified as such by the Minister for the purpose of this Act; and

(b) satisfies the Comptroller that he or she is not domiciled in the State,

shall not be chargeable with income tax on income derived from sources out of the State even if such income is received in the State, but he or she shall be chargeable with tax only on income derived from sources within the State.

(2) Any claim which an individual is entitled to make by virtue of this section shall be made to the Comptroller in such form as he or she may approve and the Comptroller shall on proof of the facts to his or her satisfaction determine the claim accordingly.

(3) Notwithstanding the foregoing provisions of this section an individual shall not be entitled to the benefit of this section even if he or she is not domiciled in the State if he or she is—

(a) a person who would be regarded as belonging to the State on the first day of January, 1976 if Chapter VIII of the Constitution of the State had commenced prior to that date; or

(b) a person who has at any time before the commencement of this Act been classified by the Comptroller for income tax purposes as resident in the State.

*(Inserted by Act 13 of 1976 as section 29A)*

PART VII  
RATES OF TAX, ETC.

**Imposition of tax.**

\*32. (1) There shall be charged, levied and collected on the chargeable income of every person tax at the rates set forth—

(a) in the case of an individual who is a resident or a Commonwealth citizen—

on the first \$ 500 nil per centum

on the next 500 i.e. 501 – 1000 – 5 per centum

” ” ” 500 ” 1001 – 1500 – 7½ ” ”

” ” ” 500 ” 1501 – 2000 – 10 ” ”

” ” ” 500 ” 2001 – 2500 – 12½ ” ”

” ” ” 500 ” 2501 – 3000 – 15 ” ”

” ” ” 1000 ” 3001 – 4000 – 20 ” ”

on the next \$1500 i.e. 4001 – 5500 – 25 per centum

” ” ” 1500 ” 5501 – 7000 – 32½ ” ”

” ” ” 2000 ” 7001 – 9000 – 40 ” ”

” ” ” 2000 ” 9001 – 11000 – 47½ ” ”

above 11000 55 ” ”

*(Substituted by Act 13 of 1976)*

(b) in respect of a company there shall be charged, levied and collected corporation tax of 33% in respect of income—

(i) earned in 2013 and assessed in 2014; and

(ii) earned thereafter in subsequent years and assessed in the following years.

*(Substituted by Act 5 of 2013)*

(2) No company shall be entitled to deduct the whole or any part of any amount which represents tax at the corporation rate of tax from dividends paid out of profits or gains in respect of any period.

**Deduction of tax from dividends of companies.**

33. (1) Every company which is registered in the State shall be entitled to deduct from the amount of any dividend paid to any shareholder tax at the income tax rate of tax paid or payable by the company (double taxation relief being left out of account) on the income out of which such dividend is paid:

Provided that where tax is not paid or payable by the company on the whole income out of which the dividend is paid, the deduction shall be restricted to that portion of the dividend which is paid out of income on which tax is paid or payable by the company.

*(Amended by Act 13 of 1976)*

\* Originally section 30, and original section 31 repealed by Act 13 of 1976.

(2) Every such company shall, upon payment of a dividend, whether tax is deducted therefrom or not, furnish each shareholder with a certificate setting forth the amount of the dividend paid to the shareholder and the amount of tax which the company has deducted in respect of that dividend and also, where the tax paid by the company is affected by double taxation relief, the rate (hereinafter in this Act referred to as the net Territorial rate) of the tax paid or payable by the company after taking double taxation relief into account.

(3) The provisions of subsections (1) and (2) shall apply, *mutatis mutandis*, to a Trustee or other person assessed under the provisions of sections 22(2) and 23 of this Act.

#### **Setting off of tax deducted.**

**34.** Any tax which a company has deducted or is entitled to deduct under the last preceding section from a dividend paid to a shareholder, any tax which a Trustee has deducted from any distribution paid to a beneficiary, and any tax applicable to the share to which any person is entitled in the income of a body of persons assessed under this Act, shall, when such dividend or share is included in the assessable income of such shareholder or person, be set off for the purposes of collection against the tax charged on that chargeable income:

Provided that where no tax has been deducted from the dividend such dividend shall be deemed to have been paid out of the net profits of the company after tax has been paid, and shall thereupon be grossed to such a figure as, after the deduction of tax at the prescribed rate, would amount to the actual dividend paid, the shareholder being given credit for the difference as tax paid in respect of the dividend, and liable to return the gross sum as income in his or her return.

#### **Deduction of tax from Government stock.**

**35.** (1) When the Accountant General or other appointed officer pays interest on any loan charged on the Public Revenue of the State other than a loan on which exemption has been given wholly or partly under section 8, he or she shall deduct from such interest tax at the rate prescribed in section 32 and shall forthwith pay over such deductions to the account for Income Tax.

(2) On making each payment to the person entitled to the interest he or she shall give a certificate stating the name of the person, the date, the amount of the interest and of the tax deducted.

(3) The amount so deducted shall be deemed to be a payment of tax by the person named, and in computing the total assessable income of that person the gross amount of the interest shall be included and the tax shall be set off as under section 34.

#### **Imposition of with-holding tax.**

**36.** (1) A person resident in Saint Christopher and Nevis, whether or not that person is a taxpayer under this Act, who pays any—

- (a) dividend;
- (b) interest, annuity, premium and discount;
- (c) rent, lease, contract and royalty payments;
- (d) a natural resource payment;
- (e) commissions, remuneration, fees and licences;

- (f) charges for the provision of personal services, commercial advice and managerial skills;
- (g) administration, management and head office expenses;
- (h) profits;
- (i) technical, professional, vocational and any other service fees;
- (j) accounting, actuarial, legal and audit expenses;
- (k) non-life insurance premiums;
- (l) any other annual or periodic payment or distribution;
- (m) expenses allocated, reimbursements of costs, expense recharges, shared costs or any other expense of a similar nature;
- (n) other payments for service,  
*(Inserted by Act 2 of 2016)*

to a non-resident or to another person on behalf of a non-resident, shall withhold from such payment, irrespective of whether the payment produces profits in the hands of the recipient or is of an income or expense nature, tax at the rate of fifteen percent of the amount paid.

*(Words substituted by Act 2 of 2016)*

- (2) A person withholding tax under subsection (1) shall—
  - (a) provide the non-resident person with a certificate, stating the amount of the payment and the amount of tax withheld;
  - (b) on or before the 15th day of the months of March, June, September and December, file a quarterly return for the quarter preceding those months with the Comptroller in the form to be approved by him or her accompanied by payment of the amount withheld of the payment made to the non-resident.

*(Substituted by Act 3 of 2014)*

(3) Tax that is due and payable shall be a debt to the Crown and shall be payable to the Comptroller.

- (4) A person required to withhold tax under subsection (1) who—
  - (a) fails to withhold tax as required;
  - (b) having withheld tax, fails to pay the tax to the Comptroller as required;  
or
  - (c) is responsible under this Act for the payment of tax on behalf of another person, may retain out of any money coming to his or her hands on behalf of such other person, so much thereof as is sufficient to pay such tax, and is hereby indemnified against any other person for all payments made by him or her in pursuance of this Act, and

shall be liable for the amount of outstanding tax.

*(Inserted by Act 2 of 2016)*

- (5) In this section—

“non-resident” means a person not residing in Saint Christopher and Nevis and is to be determined in accordance with the Act;

“person” for the purpose of with-holding taxes includes an individual, agency, company, associated enterprise, branch, subsidiary, representative, any other

body of persons or any other entity that the Minister from time to time may prescribe.

*(Substituted by Act 2 of 2016)*

(6) Where the accounts of a person are maintained on an accruals basis, and during the year of assessment any amount of the kind specified in subsection (1) is charged as an expense but payment is not made, tax shall be deducted and accounted for to the Comptroller as if payment has been made on the last day of such basic year or financial year.

*(Amended by Act 9 of 2006)*

(7) Subject to the provisions of the Act, the Minister may make regulations for the proper carrying out of the purposes of this section.

*(Substituted by Act 6 of 2006)*

(8) For the purposes of determining the tax under subsection (1), the tax shall be payable—

- (a) on amounts accrued in the taxpayer's accounts irrespective of whether these payments have been paid;
- (b) whether or not the payer is entitled to deduct such payment in computing the chargeable income or the payable income tax of the person;
- (c) whether or not an amount is disallowed as a deduction under any other of the provisions of this Act.

(9) For the purposes of subsection (1) an office, branch, or agency of a non-resident company or any other person under subsection (5) shall be deemed to have remitted the profits thereof which were calculated in any tax year.

(10) For the purposes of this section, the expression "profits" includes the profits derived from any other comprehensive income after the payment of any income tax or corporation tax.

*(Subsections (8) to (10) inserted by Act 2 of 2016)*

### **Deduction of tax from payments to residents.**

**37.** (1) Any person paying to another resident in the State at any time after the first day of January, 1977—

- (a) any mortgage or debenture interest;
- (b) any rent or royalty;
- (c) any annuity or other annual or periodical payment,

being an amount of or amounting in the aggregate in any one year to the sum of ten thousand dollars or more which the payor would be entitled to deduct in computing his or her assessable income, shall deduct or withhold therefrom tax at the rate of forty per cent or at such other rate as may be provided by rules made under section 41 of this Act, and give a certificate of the tax so deducted.

(2) Any person making a deduction under subsection (1) of this section shall forthwith render an account to the Comptroller of the amount so deducted and every such amount shall be recoverable in like manner as is provided in Part XI of this Act.

(3) In the case of a company the account aforesaid shall be rendered by the manager or other principal officer of the company.

*(Inserted by Act 13 of 1976 as section 35A)*

PART VIII  
ADMINISTRATION

**Appointment of Administrative Authority.**

**38.** (1) For the due administration of this Act, the Governor-General shall appoint the Comptroller of Inland Revenue and such other officers and persons as may be necessary and shall furnish such Comptroller and officers with warrants of appointment under his or her hand.

(2) The Minister shall appoint Commissioners for the purpose of hearing appeals against assessments and performing such other duties as may be assigned to them by this Act or as may be prescribed, and such Commissioners shall be furnished with warrants of appointment under the hand of the Governor - General.

*(Amended by Act 5 of 1972)*

(3) The Comptroller and the Commissioners holding office immediately before the date of commencement of this Act shall be deemed to have been appointed under this Act.

*(Amended by Act 5 of 1972)*

(4) Three Commissioners shall form a quorum at any meeting.

**Official secrecy.**

**39.** (1) Every person having an official duty or being employed in the administration of this Act shall regard and deal with all documents, information, returns, assessment lists, and copies of such lists relating to the income or items of income of any person, as secret and confidential, and shall make and subscribe a declaration in the form prescribed to that effect before a Magistrate.

(2) Every person having possession of or control over any documents, information, returns or assessment lists or copies of such lists relating to the income or items of income of any person, who at any time communicates or attempts to communicate such information or anything contained in such documents, returns, lists or copies to any person—

(a) other than a person to whom he is authorised by the Governor-General to communicate it; or

(b) otherwise than for the purposes of this Act,

commits an offence against this Act.

(3) Where provision is made for the granting of double tax relief under Part XIII of this Act the obligation as to secrecy imposed by this section shall not prevent the disclosure to the authorised officers of the Government of a State of such facts as may be necessary to enable the proper relief to be given either there or in this State.

**Making rules.**

**40.** (1) The Minister may make rules generally for carrying out the provisions of this Act, and may, in particular, by those rules provide—

(a) for the form of returns, claims, statements, and notices under this Act;

(b) for the collection of tax by instalments or by means of deductions made from emoluments;

(c) for any such matters as are authorised by this Act to be prescribed;

- (d) for the conditions under which persons chargeable to tax may leave or may be prevented from leaving the State and for the issue of exit certificates showing that the tax has been paid or that satisfactory arrangements have been made therefor; and
- (e) for any other matters or thing, whether similar or not to those abovementioned, in respect of which it may be expedient to make rules for the purpose of carrying this Act into execution.

*(Amended by Act 5 of 1972)*

(2) All rules purporting to be made in pursuance of this section shall be published in the *Gazette* and shall come into operation on such publication or at such other time as may be stated in such rules.

#### **Signature on notices.**

41. (1) Every notice to be given by the Comptroller under this Act shall be signed by him or her or by a person from time to time appointed by him or her for that purpose, and every such notice shall be valid if the signature of the Comptroller is duly printed or written thereon.

(2) Any notice given by the Commissioners may be signed by one Commissioner or other person appointed by them for that purpose.

(3) A signature attached to any notice and purporting to be the signature of any person so appointed shall be taken to be the signature of that person until the contrary be shown.

#### **Service of notices.**

42. Notice may be served on a person either personally or by being sent through the post to his or her last known business or private address, and shall in the latter case be deemed to have been served in the case of persons resident in Saint Christopher or Nevis not later than seven days succeeding the day when posted, and in the case of persons not so resident, one month succeeding the day on which the notice would have been received in the ordinary course of the post, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and posted.

#### **Refusal or neglect to accept letters.**

43. Where the person to whom there has been addressed a letter containing any notice which may be given under the provisions of this Act refuses to accept delivery of such letter, or is informed of the fact that there is a letter awaiting him or her at the Post Office and such person refuses or neglects to take delivery of such letter, such notice shall be deemed to have been served upon him or her on the date of his or her refusal or on which he or she was informed that there was a letter awaiting him or her at the Post Office.

#### **Assessments not void by reason of errors.**

44. (1) No assessment, warrant or other proceeding purporting to be made in accordance with the provisions of this Act, shall be quashed, or deemed to be void or voidable, for want of form, or be affected by reason of a mistake, defect, or omission therein, if the same is in substance and effect in conformity with or according to the intent and meaning of this Act, and if the person assessed or intended to be assessed or affected thereby is designated therein according to common intent and



understanding.

- (2) An assessment shall not be impeached or affected—
- (a) by reason of a mistake therein as to—
    - (i) the name or surname of a person liable; or
    - (ii) the description of any income; or
    - (iii) the amount of tax charged;
  - (b) by reason of any variance between the assessment and the notice thereof:

Provided that in cases of assessment the notice thereof shall be duly served on the person intended to be charged, and such shall contain, in substance and effect, the particulars on which the assessment is made:

and further provided that any such mistake shall, as soon as it has been discovered, be corrected in the assessment and notice thereof.

#### **Time limits.**

**45.** Where a time limit is laid down in this Act for the rendering of a return, or of particulars, or any lists and information required under any section, or giving notice of objection or appeal, the respective authority to whom any document, information or notice has to be supplied, on being satisfied that owing to absence from the State, sickness or other reasonable cause an extension of time is reasonable may extend the time limit accordingly.

## PART IX

### RETURNS AND ASSESSMENTS

#### **Returns of personal incomes.**

**\*46.** (1) A taxpayer shall file a true and correct return of all sources of the taxpayers taxable income not later than the 15th day of the fourth month following the end of the year of assessment.

(2) A taxpayer whose basic year is different from the calendar year shall file a return, referred to in subsection (1), not later than the 15th day of the fourth month following the end of the taxpayer's basic year.

(3) The return of income, referred to in subsection (1), shall contain the following information, that is to say—

- (a) the total amount of chargeable income for the year of assessment;
  - (b) the amount of tax payable in respect of such income; and
  - (c) the amount of any tax previously paid or withheld in respect of that income.
- (4) The return of income, referred to in subsection (1), shall—
- (a) be in the form;
  - (b) contain such additional information; and

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\* Originally section 44.

(c) be filed,

as may be prescribed by the Comptroller.

(5) A taxpayer shall pay any taxes payable by the taxpayer not later than the 15th day of the fourth month following the end of the calendar or basic year, as the case may be.

(6) A taxpayer shall pay the tax payable for a year of assessment, less any installments of tax paid under section 67 of the Act.

*(Substituted by Act 6 of 2006)*

### **Returns by employers.**

47. (1) The Comptroller may by notice in writing require any employer to furnish him or her within the prescribed time with a return for any year containing—

- (a) the names and places of residence of all persons employed by him or her; and
- (b) the payments and allowances or benefits made to those persons in respect of that employment, except persons who are not employed in any other employment and whose remuneration in the employment for the year does not exceed the prescribed amount.

(2) The expression “remuneration” in subsection (1) shall be deemed to include not only moneys earned as salary, wages, overtime, or bonus, but also the annual value of any residence, quarters, board and lodging, or other allowances or benefits in kind received by an employee in respect of his or her services.

(3) Where the employer is a company or body of persons, the manager or other principal officer shall be deemed to be the employer for the purposes of this section, and any director of a company, or person engaged in the management of a company, shall be deemed to be a person employed.

### **Official information and official secrecy.**

48. The Comptroller may require any officer in the employment of the Government or any municipality or other public body to supply such particulars as may be required for the purposes of this Act and which may be in the possession of such officer:

Provided that no such officer shall by virtue of this section be obliged to disclose any particulars as to which he or she is under any statutory obligation to observe secrecy.

### **Power of Comptroller to require accounts and returns.**

49. The Comptroller may by notice in writing require any person or the agent or attorney of any person or the secretary, attorney, manager, agent, or other principal officer of any company to furnish him or her within the prescribed time with—

- (a) a return of income; and
- (b) such accounts (including a balance sheet at the terminal date of such accounts) and particulars as may seem necessary to the Comptroller for the purposes of this Act.

**Lists to be prepared by representative or agent.**

**50.** Every person who, in whatever capacity, is in receipt of any money or value being income arising from any of the sources mentioned in this Act of or belonging to any other person shall, whenever required to do so by any notice from the Comptroller, prepare and deliver within the time prescribed a list in a form approved by the Comptroller, signed by him or her, containing—

- (a) a true and correct statement of all such income;
- (b) the name and address of every person to whom the same shall belong.

**Returns of interest.**

**51.** (1) Every person carrying on the trade or business of banking or any other trade or business which pays interest on any other sums of money received or retained shall whenever so required by notice furnish to the Comptroller within the prescribed time particulars of the names and addresses of the persons to whom interest was paid or credited and of the amount of the interest for the period specified.

(2) The Accountant General shall furnish the like particulars when required in respect of the Government Savings Bank.

(3) No particulars shall be required to be furnished where the amount of such interest applicable to any person does not exceed fifty dollars.

**Manager of corporate bodies of persons.**

**52.** The manager or other principal officer of every corporate body of persons or society shall be answerable for doing all such acts, matters and things as are required to be done by virtue of this Act for the assessment of such body or society and for the payment of the tax.

**Comptroller to make assessments.**

**53.** (1) The Comptroller shall proceed to assess every person chargeable with the tax as soon as may be after the date prescribed for delivering the returns.

(2) Where a person has delivered a return, the Comptroller may—

- (a) accept the return and make an assessment accordingly; or
- (b) refuse to accept the return and, to the best of his or her judgment, determine the amount of the chargeable income of the person and assess him or her accordingly.

(3) Where a person has not delivered a return and the Comptroller is of the opinion that such person is liable to pay tax, he or she may, according to the best of his or her judgment, determine the amount of the chargeable income of such person and assess him or her accordingly, but such assessment shall not affect any liability otherwise incurred by such person by reason of his or her failure or neglect to deliver a return.

**Penalty for late submission of returns.**

**54.** (1) If any person who is required by the foregoing provisions of this Act to submit a return to the Comptroller fails to do so within one month after the prescribed date, the Comptroller may add to the amount payable after assessment a fine in the sum of two and one half per centum of such amount but in any event such fine shall not be less than one dollar.

(2) The provisions of the principal enactment relating to the collection and recovery of tax shall apply to any sum imposed by way of fine in accordance with the provisions of subsection (1) of this section.

*(Inserted by Act 19 of 1972 as section 51A)*

### **Transactions designed to avoid liability to tax.**

**55.** (1) Where the Comptroller has reasonable grounds to believe that the main purpose or one of the main purposes for which any transaction was or transactions were effected (whether before or after the commencement of this Act) was the avoidance or reduction of liability to tax for any year, he or she may, if he or she determines it to be just and reasonable, direct that such adjustments shall be made as respects liability to tax as he or she may deem appropriate so as to counteract the avoidance or reduction of liability to tax which would otherwise be effected by the transaction or transactions:

Provided that this subsection shall not apply to any transaction the main purpose or one of the main purposes of which was to effect the succession by a resident company, incorporated for that purpose, to any business carried on by an individual or partnership.

(2) Without prejudice to the generality of the powers conferred by subsection (1) of this section the powers conferred thereby shall extend—

- (a) to the charging with tax of persons who, but for the adjustments, would not be chargeable with any tax, or would not be chargeable to the same extent; and
- (b) to the charging of a greater amount of tax than would be chargeable but for the adjustments.

(3) Notwithstanding the generality of subsection (1), the Comptroller may take the following actions where he or she believes that action taken by a taxpayer or prospective taxpayer may be consistent with an avoidance arrangement—

- (a) disregard, combine or recharacterise any steps in or parts of an avoidance arrangement;
- (b) disregard any accommodating or tax- indifferent party or combine that party with any other party;
- (c) deem persons who are related persons to be a single person for purposes of determining the tax treatment of any one of those persons;
- (d) reallocate any gross income, receipt or accrual of a capital nature, expenditure or rebate amongst the parties;
- (e) recharacterise any item of income, receipt, accrual or expenditure;
- (f) treat an avoidance arrangement as if it had not been entered or carried out, or take actions in such other manner as in the circumstances of the case the Comptroller deems appropriate for the prevention or diminution of the relevant tax benefit.

(4) For the purposes of this Act, an avoidance arrangement is an arrangement, transaction, or group of transactions where one of the purposes is or the effect of which is to obtain a tax benefit or an arrangement and which may—

- (a) be entered into or carried out by means or in a manner which would not normally be employed for *bona fide* business purposes, other than obtaining a tax benefit;

- (b) lack commercial substance, in whole or in part;
- (c) create or has created rights or obligations that would not normally be created between persons dealing at arm's length; or
- (d) frustrate the purpose of any provision of this Act.

(5) The Comptroller may take appropriate compensating adjustments that are necessary to ensure the consistent treatment of all parties to an avoidance arrangement.

*(Inserted by Act 10 of 2012)*

#### **Appointment of agent in the United Kingdom.**

**56.** (1) For the purpose of facilitating the assessment of the income of persons residing in the United Kingdom, the Governor-General may appoint an agent in the United Kingdom who shall make enquiries on behalf of the Comptroller in respect of any such person as may apply to be dealt with through an agent, and shall ascertain and report to the Comptroller the amount of the chargeable income of such person in accordance with this Act, and shall forward to the Comptroller the accounts and computation upon which his or her report is based.

(2) The Comptroller, on receipt of the report, shall enter the amount reported in the assessment list:

Provided that if it appears to the Comptroller that an error has occurred in the accounts or computation he or she may refer the report back for further consideration:

Provided also that nothing in this section shall affect the right of objection and appeal provided in this Act.

#### **Omissions and undercharges to be rectified.**

**57.** Where it appears to the Comptroller that a person liable to tax has not been assessed, or has been charged on a less amount than he or she ought, or has received deductions or allowances to which he or she is not entitled, the Comptroller may, within the year of assessment or within six years after the expiration thereof, assess such person at such amount or additional amount as according to his or her judgment ought to have been charged, and the provisions of this Act as to notice of assessment, appeal, and other proceedings shall apply to such assessment or additional assessment and to the tax charged thereunder.

#### **Comptroller or Commissioners may require a person to attend.**

**58.** (1) The Comptroller or the Commissioners may by notice in writing require any person to attend and give evidence with respect to his or her income, and to produce all books or other documents in his or her custody or under his or her control relating to such income.

(2) A person authorised by the Comptroller for any purpose related to the administration or enforcement of this Act may at any reasonable time, on the production of his or her letter of authorisation, enter into any premises or place where any business is carried on or any property is kept or anything is done in connection with any business or any books or records are or should be kept pursuant to this Act and—

- (a) audit or examine the books and records and any account, voucher, letter, telegram or other document which relates or may relate to the information that is or should be in the books or records or to the amount of tax payable under this Act;

- (b) examine property described by an inventory or any property, process or matter in an examination of which may, in his or her opinion, assist him or her with the accuracy of an inventory or ascertaining the information that is or should be in the books or the amount of tax payable under this Act; or
- (c) require the owner or manager of the property or business and any employee on the premises or place to give him or her all reasonable assistance with his or her audit or examination either orally or in writing, on oath or otherwise and for that purpose, require the owner or manager to attend at the premises or place with him or her.

*(Inserted by Act 7 of 1992)*

(3) The Comptroller may for any purpose related to the administration or enforcement of this Act by registered letter or by any demand served personally, require from any person—

- (a) any information or additional information in the form of a return of income or a return of information or otherwise; and
- (b) production or production on oath of any books, letters, accounts, invoices, statements or other documents,

within such reasonable time as may be stipulated therein.

*(Inserted by Act 7 of 1992)*

(4) The Comptroller may for any purpose related to the administration or enforcement of this Act, by not less than seven days notice in writing, require any person to attend before him or her and give evidence on oath and to produce on oath all books, letters, accounts, invoices, statements or other documents in his or her possession or control.

*(Inserted by Act 7 of 1992)*

(5) No person shall hinder, molest or interfere with any person doing anything that he or she is authorised by or pursuant to this section to do or prevent or attempt to prevent any person from doing any such thing and notwithstanding any other law to the contrary, every person shall do anything that he or she is required by this section to do.

*(Inserted by Act 7 of 1992)*

(6) Without restricting the generality of this section, this section applies to banks, barristers and solicitors, their employees and offices, as it applies to any other business, persons and premises.

*(Inserted by Act 7 of 1992)*

#### **Lists of persons assessed.**

**59.** (1) As soon as possible the Comptroller shall prepare lists of persons assessed to tax.

(2) Such lists (herein called the assessment lists) shall contain the names and addresses of the persons assessed to tax, the amount of the tax payable by them and such other particulars as may be prescribed.

#### **Notices to be served on persons assessed.**

**60.** The Comptroller shall cause to be served personally on or sent by post to each person whose name appears on the assessment lists a notice addressed to him or her at his or her usual place of abode or business stating the amount of tax payable by him or her, and informing him or her of his or her rights under section 62.

**Relief in respect of error or mistake.**

**61.** (1) If any person who has paid the tax charged upon him or her for any year alleges that the assessment and charge to tax for that year was excessive by reason of some error or mistake in the return or statement made by him or her for the purposes of the assessment, he or she may, at any time not later than six years after the end of the year of assessment, apply in writing to the Comptroller for relief:

Provided that no relief shall be given under this section where the assessment—

- (a) was made by the Comptroller to the best of his or her judgment under section 53;
- (b) was made in accordance with the practice generally prevailing at the time.

(2) The Comptroller when satisfied with the claim shall give such relief as is just and reasonable by repayment.

**PART X****OBJECTIONS AND APPEALS****Objections and Appeals.**

**62.** (1) If any person disputes the assessment made by the Comptroller he or she may apply within one month to the Comptroller by notice of appeal in writing, to have the assessment determined by the Commissioners, and the application shall state precisely the grounds of his or her objection to the assessment.

(2) Whenever in this Act power is given to the Comptroller to determine certain matters then the person concerned shall have a like right to give notice of appeal in writing within one month of the date of the determination of the matter by the Comptroller, such notice of appeal to state precisely the grounds of objection.

(3) On receipt of a notice of appeal the Comptroller or the Commissioners may require the person concerned to furnish such particulars as he or she or they may deem necessary with respect to the income of the person assessed and to produce all books or other documents in his or her custody or under his or her control relating to such income and may summon any person who they think is able to give evidence respecting the assessment, to attend before them, and may examine such person (except the clerk, agent, servant or other person confidentially employed in the affairs of the person to be charged) on oath or otherwise.

(4) When the appellant agrees with the Comptroller, or when in the absence of agreement the appeal is determined by the Commissioners the entry in the assessment list shall be amended as necessary and such assessment shall stand as the amount assessed and charged.

**Procedure at appeals.**

**63.** (1) Every person appealing shall attend before the Commissioners in person at the time fixed for the hearing of the appeal unless he or she is non-resident in the State at the time.

(2) Either party to an appeal may be represented by counsel, a solicitor or an accountant.

(3) The onus of proving that the assessment complained of is excessive shall be on the appellant.

(4) All appeals shall be heard in camera.

#### **Appeal on point of law.**

**64.** (1) Where the appellant or the Comptroller disagrees with the decision of the Commissioners as being erroneous in point of law he or she may within twenty-one days lodge with the Commissioners a notice of appeal to a Judge of the High Court stating the ground of his or her objection in point of law.

(2) Such appeal shall be by way of case stated and the Commissioners shall state in the case the facts and the evidence and the point of law involved.

(3) Within six weeks of the date such appeal is lodged the Commissioners shall deliver six copies of the case to the person demanding the same who shall within fifteen days lodge three copies with the Court and transmit one to the other party.

#### **Adjustment of assessment after determination.**

**65.** (1) After hearing the appeal the Judge shall give judgment on the point of law and shall, when necessary, instruct the Commissioners to amend the assessment accordingly.

(2) The appellant or the Comptroller may appeal from the judgment of a Judge of the High Court to the Eastern Caribbean Court of Appeal.

## PART XI

### COLLECTION AND RECOVERY OF TAX

#### **Payment of tax.**

**66.** (1) Any tax charged by notice of assessment shall be due and payable within one month of the date of issue of assessment.

(2) Tax shall be payable in accordance with subsection (1) of this section notwithstanding that notice of an objection or an appeal has been given.

*(Substituted by Act 5 of 1972)*

(3) Where after assessment has been made in accordance with the provisions of this Act any amount collected pursuant to the provisions of section 67 is found to be in excess of the tax shown to be payable in the assessment, the excess shall be refunded as soon as practicable thereafter and in any case not later than three months after the assessment has been made.

#### **Payment of tax by instalments.**

**67.** (1) Notwithstanding the provisions of subsection (1) of section 66, but subject to the provisions of this section, every person shall pay to the Comptroller on or before the 15th March, the 15th June, the 15th September and the 15th December respectively, in each year of income (in this Act otherwise referred to as "the basic year"), an amount equal to one quarter of the tax as estimated by him or her at the rates set out in section 32 on his or her estimated chargeable income for that year and,



on or before the 1st July in the next year, the remainder, if any, of the tax as estimated by him or her under subsection (2) of section 47.

*(Amended by Act 6 of 2006)*

(2) For the purposes of subsection (1) of this section, the estimated chargeable income of any person for a year of income shall be taken to be the chargeable income as disclosed in his or her return, if any, of total income for the preceding year of income.

(3) Where the estimated chargeable income of any person for the year of income as provided for by subsection (2) is, in the opinion of such person, likely to be less than the chargeable income of the preceding year, on an application by such person for the purpose, the Comptroller may revise the estimated chargeable income of that person and the amount of tax chargeable thereon, and the provisions of subsection (1) of this section shall apply accordingly.

(4) The Comptroller may estimate the amount of tax payable by any person where—

- (a) that person fails to make the return required by section 46; or
- (b) no tax was payable in the immediately preceding year of income, and upon making demand therefor in writing, of such person, subsection (1) of this section shall apply accordingly, as if the Comptroller's estimate was the estimate of such person.

(5) Where an individual is in receipt of emoluments, within the meaning of section 70, in a year of income, the provisions of subsection (1) of this section shall not apply to that individual in respect of that part of his or her income arising or accruing to him or her from emoluments received by him or her in the year of income, but the instalment of tax payable under subsection (1) of this section shall be at the highest rates, as if that part of his or her income arising or accruing to him or her from emoluments as aforesaid was included in his or her estimated chargeable income for that year.

(6) Where amounts have been deducted or withheld under section 69 from the emoluments received by an individual in a year of income, if the emoluments from which such amounts have been deducted or withheld and which he or she had received in that year are equal to or greater than three-quarters of his or her total income for that year, he or she shall, on or before the 1st July in the next year, pay to the Comptroller the remainder of his or her, tax for the year as estimated under section 47.

(7) The provisions of this Act shall, wherever applicable, apply *mutatis mutandis* to this section.

*(Inserted by Act 12 of 1970 as section 63A)*

### **Filing of Declarations.**

**68.** (1) Subject to the provisions of this section, every person to whom any payment is made at any time during the income year one thousand nine hundred and sixty-seven or any year thereafter of or on account of any emoluments may, for the purpose of enabling any deductions which may be made under section 69 to be calculated with reference to such allowances to which such persons may be entitled under the rules made under section 40, file with the person making the payment a declaration in a form approved by the Comptroller containing such particulars as may be prescribed:

Provided that a declaration shall not be filed by—

- (a) a person resident outside of the State;
- (b) a married woman whose income pursuant to section 19 is chargeable in the name of her husband;
- (c) such persons as may be specified by, or who comply with any conditions required by the Comptroller by notice published in the manner provided by the rules made under section 39 unless the Comptroller in any particular case authorises any such person to file a declaration; and:

Provided further that if any person entitled by this subsection to file a declaration is at the time or times when required by the said rules to file a declaration in the employment of more than one person by whom any such payment is made, he or she shall file a declaration with only one of the persons by whom any such payment is made as he or she shall think fit.

(2) For the purposes of this section the expression “employment” means the position of an individual in the service of some other person (including Her Majesty, the Government of this State or a foreign state or sovereign).

#### **Deduction on payment of emoluments.**

**69.** (1) Notwithstanding anything in this Act contained, on the making of any payment after the 31st day of December, 1966 of or on account of any emoluments arising or accruing in or derived from or received in this State during the income year 1967 or any income year thereafter, tax shall, subject to and in accordance with any rules made under section 40 be deducted or withheld by the person making the payments notwithstanding that when the payment is made no assessment has been made in respect of the emoluments or that the tax on the emoluments is for a year of assessment other than the income year during which the payment is made:

Provided that if any question arises whether any emoluments are or are not emoluments in respect of which tax shall be deducted or withheld pursuant to the provisions of this section, or whether any allowances claimed in a declaration made pursuant to section 68 should be admitted, such question shall be determined by the Comptroller subject to any provisions as to appeal against such determination as may be provided by the rules made under section 40, and to the provisions of this Act relating to appeals.

(2) The tax deducted or withheld pursuant to the provisions of subsection (1) of this section shall be paid to the Comptroller by the person deducting or withholding the same at such time or times and by such date or dates as may be prescribed in the rules made under section 40, and on the payment thereof the Comptroller shall send to the payer a receipt which shall to the extent of the amount referred to therein be a good and sufficient discharge of the liability of the payer for any amount deducted or withheld pursuant to the provisions of this section.

(3) If any person fail to remit to the Comptroller any amount deducted or withheld pursuant to the provisions of subsection (1) of this section by such date or dates as may be prescribed in the rules made under section 40, he or she shall be liable to a penalty of ten per centum of the amount or part thereof not remitted or ten dollars whichever is the greater in addition to the amount itself together with interest on the amount at the rate of five per centum per annum.

(4) All amounts deducted or withheld by any person pursuant to the provisions of subsection (1) of this section shall be deemed to be held in trust by such person for the Crown for the use of this State and shall be kept by such person separate and apart from his or her own moneys and shall not be subject to attachment in respect of any

debt or liability of the said person and in the event of any liquidation, assignment, or bankruptcy the said amounts shall remain apart and form no part of the estate in liquidation, assignment or bankruptcy.

*(Amended by Act 6 of 1976)*

(5) Every person who shall have deducted or withheld any tax pursuant to the provisions of subsection (1) of this section, shall deliver personally or send by post within such time or times as may be prescribed by rules made under section 40 to the person from whose emoluments the tax was deducted or withheld or to such other person as may be prescribed by rules made under the said section, such certificates of account relating to the amount of tax deducted by him or her as may be prescribed by the said rules.

(6) If any person shall fail to comply with the provisions of subsection (5) of this section or shall fail to deliver or send to the Comptroller within such time or times as may be prescribed by rules made under section 40 any return, account or certificate or any copy thereof which he or she may be required by the said rules to deliver or send to the Comptroller for the purpose of rendering him or her accountable to the Comptroller for any tax deducted or withheld by him or her pursuant to the provisions of this section, he or she commits an offence against this Act and liable, on summary conviction, to a fine not exceeding fifty dollars for every day during which such failure shall continue:

Provided that it shall be a good and sufficient defence to any complaint brought under this subsection that any such failure was not due to the wilful neglect or default of the defendant or of any person acting on his or her behalf.

(7) No action shall lie against any person for withholding or deducting any sum of money in compliance or intended compliance with the provisions of subsection (1) of this section.

(8) Where by this Act any obligation is imposed on any person to deduct or withhold any tax pursuant to the provisions of subsection (1) of this section any agreement made by any such person not to withhold or deduct such tax shall be void and of no force or effect whatsoever.

(9) Every person from whose emoluments any amount shall be deducted or withheld pursuant to the provisions of subsection (1) of this section shall upon the amount being so deducted or withheld be deemed to have paid the same and shall thereupon cease to be liable for tax to the extent of the amount so deducted.

#### **Definition of emoluments for purposes of sections 40, 68 and 69.**

**70.** For the purposes of sections 40, 68 and 69 the expression “emoluments” means all salary, wages, overtime, bonus, commission or other amounts for services, perquisites, directors’ fees, retiring allowance or pension arising or accruing in or derived from or received from or received in this State and which are assessable to income tax but shall not include any salary or share of profits arising from a trade, profession or vocation carried on by any person either by himself or herself or in partnership with any other person.

#### **Tax Tables.**

**71.** The Comptroller shall from time to time as occasion may require prepare tax tables, a copy whereof shall be made available to any person required by this Act, to deduct or withhold tax pursuant to the provisions of subsection (1) of section 69 for the purpose of enabling any such person to calculate subject to and in accordance

with any rules made under the said section 40, the amount of any tax to be so deducted or withheld.

**Tax in arrear.**

72. Where the whole tax or an instalment is not paid on or before the prescribed date or dates then such tax shall be deemed to be in arrear and it shall be lawful for the Collector, in his or her official name, to sue for and recover the tax or such portion thereof as a civil debt in a court of competent jurisdiction or to issue a warrant under his or her hand directed to the Provost Marshal of the State setting out in the same or in a schedule thereto the several sums due on account of the tax from the persons against whom the warrant is directed.

*(Amended by Act 5 of 1972)*

**Penalty for non-payment of tax.**

73. When any tax becomes in arrear a fine in the sum of five per centum shall be added thereto and failing payment within one month of the date of notice of such fine, ten per centum per annum from the due date of payment to the actual date of payment shall be added thereto, and the provisions of this Act, relating to the collection and recovery of tax shall apply to the collection and recovery of such sum.

**Recovery by levy on goods.**

74. Where tax is in arrear the Collector may, and the Provost Marshal, immediately on receipt of a warrant, shall proceed to levy upon the goods, chattels and lands of the persons against whom the warrant is directed and to sell in the manner provided in section 77 of this Act so much of the same as may be required to satisfy the several sums due on account of the tax from the persons against whom the warrant is directed.

**Priority of claim for tax.**

75. (1) No property, goods or chattels whatever, belonging to any person at the time any tax becomes in arrear, shall be liable to be taken by virtue of any execution or other process, warrant, or authority whatever, or by virtue of any assignment, on any account or pretence whatever, except at the suit of the landlord for rent, unless the person at whose suit the execution or seizure is made, or to whom the assignment was made, pays or causes to be paid to the Collector, before the sale or removal of the goods or chattels, all arrears of tax which are due at the time of seizure, or which are payable for the year in which the seizure is made:

Provided that, where tax is claimed for more than one year, the person at whose instance the seizure has been made, may, on paying to the Collector the tax which is due for one whole year, proceed in his or her seizure in like manner as if no tax had been claimed.

(2) In case of neglect or refusal to pay the tax so claimed or the tax for one whole year, as the case may be, the Provost Marshal or the Collector shall distrain the goods and chattels notwithstanding the seizure or assignment, and shall proceed to the sale thereof for the purpose of obtaining payment of the whole of the tax charged and claimed, and the reasonable costs and charges attending such distress and sale, and the Provost Marshal and every Collector so doing shall be indemnified by virtue of this Act.

**Sale to be by public auction.**

76. (1) Every sale under this Act shall be by public auction held at such time and place as the Collector or Provost Marshal shall direct, and notice of such sale shall be given in the *Gazette* for two consecutive weeks before the day of sale.

(2) The proceeds of the sale shall be applied to the payment of the tax due and the expenses of levy and sale and the surplus, if any, shall be paid on application to the person entitled thereto.

**Commission to Provost Marshal.**

77. (1) There shall be paid to the Provost Marshal in respect of the duties performed by him or her under this Act a commission at the rate of two and a half per centum over and above the other expenses of the levy and sale on the nett proceeds of any sale under this Act.

(2) All sums of money received or recovered by the Provost Marshal as commission shall be paid into the Treasury.

**Committal to prison.**

78. (1) If no sufficient distress can be found whereby the tax charged upon a person by virtue of this Act may be levied and it be shown by the Provost Marshal or Collector to the satisfaction of a Magistrate that such person either has or has had since the date of the levy the means to pay the same, and has refused or neglected or refuses or neglects to pay the same the Magistrate may, by warrant under his or her hand, commit such person to prison without hard labour, there to be kept until payment be made of the tax charged or security given to his or her satisfaction for payment thereto together with such further sum as he or she may adjudge to be reasonable for the cost and expenses of apprehending and conveying such person to prison, where he or she shall be detained and kept according to the tenor and effect of the warrant:

Provided that the order of the Magistrate committing such person aforesaid to prison shall be made in open Court:

Provided also that no imprisonment under this section shall operate as an extinguishment of the tax charged.

(2) Proof of the means of the person making default may be given in such manner as a Magistrate may think just, and such person as aforesaid and any witness may be summoned and examined under the Magistrate's Code of Procedure Act.

(3) A Magistrate may issue his or her warrant to the Keeper of Prison directing the liberation of any defaulter, and, on receipt thereof, the Keeper of Prison shall forthwith release and discharge such defaulter out of custody, unless he or she is under detention for some other cause than that set forth in the warrant of commitment.

**Recovery of tax in certain cases.**

79. (1) If in any particular case the Comptroller has reason to believe that a person who has been assessed to tax may leave the State before such tax becomes payable without having paid such tax, he or she may by notice in writing to such person demand payment of such tax within the time to be limited in such notice, and such tax shall thereupon be payable at the expiration of the time so limited and shall, in default of payment unless security for payment thereof be given to the satisfaction of the Comptroller, be recoverable forthwith in the manner provided by this Act.

(2) If in any particular case the Comptroller has reason to believe that tax upon any chargeable income may not be recovered, he or she may at any time and as the case may require—

- (a) forthwith by notice in writing require any person to make a return and to furnish particulars of any such income within the time prescribed; and
- (b) make an assessment upon such person in the amount of the income returned, or if default is made in making such return or the Comptroller is dissatisfied with such return, in such amount as the Comptroller may think reasonable; and may by notice in writing to the person assessed require that the tax be paid forthwith or that security for the payment of the tax assessed be forthwith given to his satisfaction.

(3) Nothing in this section shall affect the right of objection and appeal provided in this Act and if any tax has been paid in excess it shall be repaid.

(4) The provisions of subsection (2) of this section shall not affect the powers conferred upon the Comptroller by section 58 of this Act.

#### **Repayment of tax.**

**80.** (1) If it is proved to the satisfaction of the Comptroller that any person for any year of assessment has paid tax, by deduction or otherwise, in excess of the amount with which he or she is properly chargeable, such person shall be entitled to have the amount so paid in excess refunded, and every claim for repayment under this section shall be made within six years from the end of the year of assessment to which the claim relates.

(2) Except as regards sums repayable on an objection or appeal, no repayment shall be made to any person in respect of any year of assessment provided he or she has received a notice of assessment, as regards which—

- (a) that person has failed or neglected to deliver a return within the prescribed time, unless it is proved to the satisfaction of the Comptroller that such neglect or failure to deliver a true and correct return did not proceed from any fraud or wilful act or omission; or
- (b) that person has been assessed in a sum in excess of the amount contained in his or her return.

(3) The Comptroller shall give a certificate of the amount to be repaid and upon the receipt of the certificate the Accountant General shall cause repayment to be made in conformity therewith.

#### **Power to remit tax.**

**81.** The Governor-General may remit the whole or any part of the tax payable by any person including any interest or fees payable if he or she is satisfied that it would be just and equitable to do so.

## PART XII

## PENALTIES

**Penalty for offences.**

**82.** Any person who without reasonable excuse whether or not liability to tax is involved—

- (a) is guilty of a breach of official secrecy;
- (b) refuses, fails or neglects to render any return or statement;
- (c) refuses, fails or neglects to furnish when required any accounts or particulars;
- (d) refuses, fails or neglects to attend or to give evidence when required to do so;
- (e) fails to pay over any tax which he or she is required to deduct;
- (f) in any other way does not comply with this Act or the rules made under this Act,

commits an offence and shall be liable, on summary conviction, to a penalty not exceeding ten thousand dollars and in default of payment to imprisonment with or without hard labour for a term not exceeding four months, and after judgment has been given for that penalty to a further penalty of two hundred and fifty dollars for every day during which the refusal, failure or neglect to render any document or to pay over any tax continues, and the Comptroller shall also proceed to assess or cause to be assessed every such person who makes default in rendering any return or statement or in furnishing any accounts or particulars.

*(Amended by Acts 5 of 1972, 7 of 1976 and Act 9 of 1986)*

**Companies carrying on business in Nevis to pay corporate tax to the Nevis Island Administration instead of the Federal Government.**

**83.** (1) A company or branch of a company carrying on business in the Island of Nevis which attracts corporate tax under the provisions of this Act shall, on the coming into force of the provisions of this section, pay the corporate tax to the Nevis Island Administration instead of paying it to the Federal Government.

(2) In computing the corporate tax referred to in subsection (1) only income which is attributable to business activities carried on or raised from Nevis or effectively connected with its business activities in Nevis shall be included in the assessable income.

(3) Subject to the provisions of this Act, there shall, for the purpose of ascertaining the assessable income of a company or branch of a company for a tax year in Nevis be deducted all outgoings and expenses incurred by the taxpayer during the tax year to the extent that such outgoings or expenses are wholly and exclusively incurred in the production of taxable income in Nevis.

(4) Where the business activities of a company or branch of a company cannot be accounted for separately from the business activities of the head office in Saint Christopher the Comptroller may, by notice in writing, distribute, apportion or allocate amounts to be included or deducted in computing the assessable income between the company or branch of a company in Nevis as is necessary to reflect the assessable income or tax payable that would have arisen for them if the arrangement had been conducted at arm's lengths.

(5) The tax collected by the Nevis Island Administration pursuant to the provisions of subsection (1) shall be paid into the Nevis Island Administration Consolidated Fund.

**Companies carrying on business in Saint Christopher but based in Nevis to pay corporate tax to Federal Government.**

**84.** (1) A company which is based (registered) in Nevis but carrying on business in Saint Christopher which attracts corporate tax under the provisions of this Act shall, on the coming into force of the provisions of this section, pay the corporate tax to the Federal Government instead of paying it to the Nevis Island Administration.

(2) In computing the corporate tax referred to in subsection (1) only income which is attributable to business activities carried on or raised from Saint Christopher or effectively connected with its business activities in Saint Christopher shall be included in the assessable income, and the provisions of subsections (3) and (4) of section 83 shall apply with such modifications as are necessary to bring them in conformity with the provisions of this section.

*(Sections 80A and 80B inserted by Act 9 of 2010 and renumbered as sections 83 and 84, respectively)*

**Penalty for incorrect returns.**

**85.** (1) Any person who, without reasonable excuse—

- (a) in any return, accounts, statement or particulars made by him or her omits the whole or any part of any income assessable under this Act;
- (b) in any return, accounts, statement or particulars made by him or her enters any figures negligently;
- (c) renders any return, accounts or statement which is not true and correct; or
- (d) gives incorrect or incomplete particulars in any claim for allowances under section 30,

commits an offence against this section.

(2) Any person who aids, abets, assists, counsels, incites or induces another person to commit any offence set out in subsection (1) of this section commits an offence against this section.

(3) Any person who is found guilty of an offence against this section shall be liable, on summary conviction, to a fine not exceeding twenty thousand dollars and in default of payment to imprisonment with or without hard labour for a term not exceeding eight months.

(4) Any person who commits any offence set out in subsection (1) of this section may, *in lieu* of summary proceedings before a Magistrates Court, be proceeded against before the Commissioners within six years of the date on which the offence is alleged to have occurred, and in such case shall forfeit a sum not exceeding three times the amount of the tax evaded or attempted to be evaded by the omission or untrue and incorrect return, accounts or statement, and such penalty shall be recovered in the same manner as any penalty under this Act and the increased tax shall be added to the assessment.



**Penalty for false statements and returns.**

**86.** (1) Any person who, for the purpose of obtaining any allowance, deduction, rebate, reduction or repayment in respect of tax for himself or herself or any other person, or who in any return, account or particulars made or furnished with reference to tax, knowingly makes any false statement or false representations, commits an offence against this Act.

(2) Any person who aids, abets, assists, counsels, incites or induces another person to—

- (a) make or deliver any false return or statement under this Act; or
- (b) keep or prepare false accounts or particulars concerning any income on which tax is payable under this Act,

commits an offence against this Act.

(3) Any person who is found guilty of an offence described in subsection (1) or (2) of this section shall be liable, on summary conviction, to a fine not exceeding fifty thousand dollars or to imprisonment with or without hard labour for a term not exceeding twelve months.

*(Amended by Act 9 of 1986)*

(4) Any person who commits any offence set out in subsection (1) of this section may, *in lieu* of proceedings before a court of summary jurisdiction, be proceeded against before the Commissioners at any time within six years of the date on which the offence is alleged to have occurred, and in such case shall forfeit a sum not exceeding three times the tax that would have been evaded by the false statement or representation, and such penalty shall be recovered in the same manner as any other penalty under this Act and the increased tax shall be added to the assessment.

**Time limit for proceedings.**

**87.** Any proceedings for the recovery of a penalty in respect of an offence shall be commenced within six years of the date on which the offence is alleged to have occurred.

**Savings for criminal proceedings.**

**88.** The provisions of this Act shall not affect any criminal proceedings under any other Act or law.

## PART XIII

## DOUBLE TAXATION RELIEF

**Relief for tax paid in the Commonwealth.**

**89.** (1) Subject to the provisions of subsection (3) of this section, if any person who has paid by deduction or otherwise or is liable to pay tax under this Act for any year of assessment on any part of his or her income, proves to the satisfaction of the Comptroller that he or she has paid, by deduction or otherwise or is liable to pay, Commonwealth income tax for that year in respect of the same part of his or her income, he or she shall be entitled to relief from tax on that part of his or her income at a rate determined in subsections (2) and (3) of this section.

(2) In the case of a resident in the State, the relief shall be—

- (a) if his or her rate of Commonwealth income tax does not exceed one half of his or her rate of tax in the State, at his rate of Commonwealth income tax;
  - (b) in any other case, at half his or her rate of tax in the State.
- (3) In the case of a person not resident in the State, the relief shall be—
- (a) if his or her rate of Commonwealth income tax does not exceed his or her rate of tax in the State, at half his or her rate of Commonwealth income tax;
  - (b) in any other case, at a rate equal to the excess of his or her rate of tax over one half of his or her rate of Commonwealth income tax.
- (4) No relief shall be granted in accordance with the provisions of subsection (1) of this section in respect of Commonwealth income tax charged in any part of the Commonwealth unless the Legislature of that part has provided for relief in respect of tax charged on income both in that part and in the State in a manner similar to that provided for in this section.
- (5) The expression “rate of tax” when applied to tax paid or payable under this Act, means the rate determined by dividing the amount of the tax paid or payable for that year (Double Taxation Relief being left out of account) by the total assessable income for that year, except that where the income which is the subject of a claim to relief under this section is computed by reference to the provisions of section 16 on an amount other than the ascertained amount of the actual profits, the rate of tax shall be determined by the Comptroller.
- (6) Where a person is, for any year of assessment, resident both in the State and in a part or place in which Commonwealth income tax is chargeable, he or she shall, for the purposes of this section, be deemed to be resident where, during that year, he or she resides for the longer period.

#### **Double Taxation arrangements.**

**90.** (1) If the Governor-General by Order declares that arrangements specified in the Order have been made with the Government of any other country with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that country, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything to the contrary contained in any enactment.

(2) On making of an Order under this section with respect to arrangements relating to any State forming part of the Commonwealth, section 89 shall cease to have effect as respects that country except in so far as the arrangements otherwise provide.

(3) Any Order made under this section may be revoked by a subsequent order.

#### **Tax Credits.**

**91.** (1) The provisions of this section shall have effect where, under section 90, tax payable (hereinafter called “foreign tax”) in respect of any income in the country with the Government of which the arrangements are made, is to be allowed as a credit against tax payable in respect of that income in the State.

(2) The amount of the tax chargeable in respect of the income shall be reduced by the amount of the credit:

Provided that credit shall not be allowed against tax for any year of assessment unless the person entitled to the income was resident in the State for that year.

(3) The credit shall not exceed the amount produced by applying the “rate of tax” as defined in section 89(4) to each amount of income assessable in the State which is doubly taxed and the total credit shall not exceed the total tax chargeable before deducting any credit.

(4) In computing the amount of the income—

- (a) where the tax chargeable depends on the amount received in the State the said amount shall be increased by the appropriate amount of the foreign tax in respect of the income;
- (b) where the income includes a dividend and under the arrangements foreign tax not chargeable directly or by deduction in respect of the dividend is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividend, the amount of the dividend included in the income shall be increased by the amount of the foreign tax which falls to be taken into account in computing the amount of the credit; but notwithstanding anything in this Act a deduction shall be allowed of any amount by which the foreign tax in respect of the income exceeds the credit therefor.

(5) Paragraph (a) of the preceding subsection (but not the remainder thereof) shall apply to the computation of total income for the purposes of determining the rate of tax mentioned in section 89(4).

(6) Where—

- (a) the arrangements provide, in relation to dividend of some classes but not in relation to dividends of other classes, that foreign tax not chargeable directly or by deduction in respect of dividends is to be taken into account in considering whether any, and if so what, credit is to be given against tax in respect of the dividends; and
- (b) a dividend is paid which is not of a class in relation to which the arrangements so provide, then if the dividend is paid to a company which controls, directly or indirectly, not less than one half of the voting power in the company paying the dividend, credit shall be allowed as if the dividend were a dividend of a class in relation to which the arrangements so provide.

(7) Credit shall not be allowed under the arrangements against tax chargeable in respect of the income of any person for any year of assessment if he or she elects that credit shall not be allowed in the case of his or her income for that year.

#### **Time limit for claims.**

**92.** (1) Any claim for an allowance for relief or by way of credit shall be made not later than six years after the end of the year of assessment and in the event of any dispute as to the amount allowable the claim shall be subject to objection and appeal in like manner as an assessment.

(2) Where the amount of any relief or credit given under this Act is rendered excessive or insufficient by reason of any adjustment of the amount of any tax payable either in the State or elsewhere, nothing in this Act limiting the time for the making of assessments or claims for relief shall apply to any assessment or claim to which the adjustment gives rise, being an assessment or claim made not later than two years from the time when all such assessments, adjustments and other

determinations have been made, whether in the State or elsewhere, as are material in determining whether any, and if so what, credit falls to be given.

**Adjustment of tax deducted from dividends and of set-off.**

**93.** (1) Where the tax paid or payable by a company is affected by double taxation relief the amount to be set off under section 34 or to be repaid under section 80 in respect of the tax deductible from any dividend paid by the company shall be reduced as follows—

- (a) if no tax is chargeable on the recipient in respect of the dividend, the reduction shall be an amount equal to tax on the gross dividend at the rate of double taxation relief applicable thereto;
- (b) if the rate of tax chargeable on the recipient in respect of the dividend is less than the rate of double taxation relief applicable to the dividend, the reduction shall be an amount equal to tax on the gross dividend at the difference between those two rates.

(2) For the purposes of this section—

- (a) if the income of the person chargeable includes one dividend such as is mentioned in the preceding subsection, that dividend shall be deemed to be the highest part of his or her income;
- (b) if his or her income includes more than one such dividend, a dividend shall be deemed to be a higher part of his or her income than another dividend if the net territorial rate applicable to the former dividend is lower than that applicable to the latter dividend;
- (c) where the tax is chargeable at different rates in respect of different rates in respect of different parts of any such dividend, or where tax is chargeable in respect of some part of any such dividend and is not chargeable in respect of some other part thereof, each part shall be deemed to be a separate dividend.

(3) The expression “double taxation relief” has the same meaning as in section 33, and the expression “rate of double taxation relief” means the rate which represents the excess of the rate of tax deductible from the payment or distribution over the State rate applicable thereto.

*(Subsection (3) inserted by Act 5 of 1972)*

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## FIRST SCHEDULE

(Section 41)

### INCOME TAX (EVASION OF TAX PAYMENT) (PREVENTION) RULES

#### Short title.

1. These Rules may be cited as the Income Tax (Evasion of Tax Payment) (Prevention) Rules.

#### Exit Certificates.

2. (1) Subject to the provisions of rule 3 of these Rules, no person shall leave or attempt to leave the State unless the person so leaving or attempting to leave has in his or her possession a valid exit certificate in the Form A contained in the Schedule to these rules duly signed by or on behalf of the Comptroller certifying that he or she—

- (a) does not owe any income tax; or
- (b) has made satisfactory arrangements for the payment of any income tax payable by him or her.

(2) Subject to the provisions of rule 3 of these Rules, no person shall issue or cause to be issued to any other person any ticket entitling such other person to leave the State unless such other person has in his or her possession a valid exit certificate as in the last preceding paragraph mentioned.

(3) An exit certificate shall be valid for such period only as may be stated therein, but in no case shall such validity exceed three months from the date of issue.

(4) Every person to whom this rule applies, when about to leave the State, shall, if required so to do by any immigration officer, surrender to such immigration officer a valid exit certificate issued to such person by or on behalf of the Comptroller.

(5) Subject to the provisions of rule 3 of these Rules, every person applying for an exit certificate shall present to the Comptroller adhesive stamps to the value of one dollar to be affixed to such exit certificate.

*(Inserted by S.R.O. 63/1976)*

#### Exemption from operation of rule 2.

3. (1) Rule 2 of these Rules shall not apply to—

- (a) any person of sixteen years or under;
- (b) any person of twenty-five years or under, who is a whole time student at any University, College, School, or other educational establishment;
- (c) any married woman living with her husband, the latter being resident in the State;
- (d) the Officer administering, the Government of the State, his or her spouse and children under eighteen years;
- (e) members of the Executive and National Assembly or Public Officers of the State, when travelling on Government business;

- (f) any member of the Military, Naval or Air Forces of the Crown or any foreign State;
- (g) any person in the diplomatic or consular service of a foreign State unless such person is also engaged in any business, profession or other employment in the State;
- (h) any Minister of Religion unless such person is also engaged in any business, profession or other employment in the State not directly connected with his or her occupation as such Minister of Religion;
- (i) any official, his or her spouse and children under eighteen years, and any servant, of an organisation in respect of which an Order has been made by the Minister under the provisions of the Diplomatic and Consular Services (Immunities and Privileges) Act, Cap. 6.01;
- (j) any *bona fide* visitor to the State whose total period of residence in any one year does not exceed three months and who has not during his or her stay engaged in any remunerative employment;
- (k) any member of the Peace Corps or of the V.S.O.; and
- (l) any person who, in the opinion of the Comptroller, is assessable and chargeable in the name of his or her trustee, attorney, factor, agent or manager.

(2) A certificate of exemption under this rule in accordance with Form B in the Schedule hereto shall be required by and be issued to the persons referred to in sub-paragraphs (b), (c) and (1) of paragraph (1) of this rule, and such certificates of exemption shall be valid for such period only as may be stated therein, and in no case shall such validity exceed six months from the date of issue.

(3) Any person who, on application, has obtained from the Comptroller a certificate of exemption under paragraph (2) of this rule, shall on demand surrender such certificate to an immigration officer on duty at the place of his or her departure.

(4) Except as in paragraph (2) of this rule provided, none of the persons described in paragraph (1) of this rule shall be required to possess or to produce a certificate of exemption under this rule.

(5) If an individual, upon his or her arrival in the State, satisfies an immigration officer that he or she is visiting the State for a temporary purpose (not with a view to deriving or earning income in the State) for a period not exceeding thirty days, the immigration officer shall mark the Passport or other travel document issued in the name of that individual with an official stamp mark bearing the date of such arrival and the letters "E.W.T.C." (denoting "Exit Without Tax Certificate") and during the period of thirty days commencing on that date, whenever necessary for the purpose of these rules, *in lieu* of producing a tax certificate, that individual may produce his or her Passport or other travel document so marked.

(6) If an individual, upon his or her arrival in the State, satisfies an immigration officer that he or she is a member of the Peace Corps or of the V.S.O., or that he or she is the representative or an official of another Government on an official visit to the State, the immigration officer shall mark the Passport or other travel document issued in the name of such individual in the manner provided in paragraph (5) of this rule, and during such individual's stay in the State, the individual may produce his or her Passport or other travel document so marked *in lieu* of producing a tax certificate.

**Power of Comptroller to forbid Sale of Ticket.**

4. Notwithstanding anything to the contrary in these Rules, no person shall issue or cause to be issued to any other person any ticket entitling such other person to leave the State or shall arrange any transportation for such other person to leave the State if a written request has been issued by or on behalf of the Comptroller of Inland Revenue to such first-named person prohibiting the issue of a ticket to or the arranging of any such transportation for such other person:

Provided that the provisions of this rule shall cease to have effect on the receipt by such first named person of a subsequent written request issued by or on behalf of the said Comptroller withdrawing such prohibition.

**Right of Appeal.**

5. Any person aggrieved by—

- (a) the refusal of the Comptroller to grant to such person an exit certificate or a certificate of exemption under these Rules; or
- (b) the request of the Comptroller prohibiting the issue of a ticket to or the arranging of transportation for such person, or the refusal of the Comptroller to issue a request withdrawing such prohibition,

may appeal to the Minister of Finance whose decision on the matter shall be final.

**Power of Police to prevent Departure.**

6. It shall be lawful for any member of the Police Force who has reasonable grounds to suspect that any person is attempting to leave the State in breach of the provisions of any of these Rules to order such person to disembark from or not to embark on any ship or aircraft, and to arrest such person if he or she disobeys any such order.

**Offences and Penalties.**

7. Any person who infringes or fails to comply with any of the provisions of rule 2 or of rule 4 of these Rules commits an offence against these Rules and shall be liable, on summary conviction, to a fine not exceeding five hundred dollars.

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**SCHEDULE TO THE RULES**

**FORM A**

*(Rule 2)*

**INCOME TAX ACT**

**EXIT CERTIFICATE TO BE PRESENTED TO SHIPPING OR AIR TRANSPORT LINES UNDER RULE 2**

..... 20 .....

Applicant.....

Address.....

Occupation.....

This is to certify that the above person

\* (i) does not owe any income tax; or

\* (ii) has made satisfactory arrangements for the payment of any income tax payable by him or her;

and that the Comptroller has no objection to a ticket being issued to the above person to leave the State.

This certificate shall be valid until the ..... day of..... 20 .....

.....  
*Comptroller*

*\*Delete what is not applicable.*

**FORM B**

*(Rule 3(2))*

**INCOME TAX ACT**

**EXEMPTION CERTIFICATE TO BE PRESENTED TO SHIPPING OR AIR TRANSPORT LINES UNDER RULE 3 (2).**

..... 20 .....

Applicant.....

Address.....

Occupation.....

This is to certify that the above person is exempt from producing an exit certificate on the ground that such person is

\* .....

and that the Comptroller has no objection to a ticket being issued to the above person to leave the State.

This certificate shall be valid until the ..... day of ..... 20 .....

.....  
*Comptroller*

*\* Insert what is applicable.*

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**SECOND SCHEDULE***(Section 7)***INCOME TAX (APPROVED MORTGAGEES) REGULATIONS****Short title.**

1. These Regulations may be cited as the Income Tax (Approved Mortgagees) Regulations.

**Interpretation.**

2. In this order—

“Act” means the Income Tax Act, Cap. 20.22;

“Approved mortgagee” means a mortgagee or mortgagees approved for the purpose of section 7 of the Act;

“loan” means a loan—

- (a) that is not guaranteed by the Government of the State;
- (b) the interest on which does not exceed the bank rate current at the time of making the loan;
- (c) that no fee or charge of any kind other than bank interest shall, by the terms of the loan, be payable to the lender in respect of the loan as long as the borrower is not in default;
- (d) that is made upon the security of a debenture, mortgage or other similar instrument;
- (e) that is for a longer period than five years;
- (f) that is provided for the erection of hotels, or dwelling houses in the State;
- (g) that is not disallowed by the Minister for the purpose of Income Tax Exemption; and
- (h) the principal amount of the loan shall not be less than five thousand dollars;

“prescribed period” means a period of ten years or the period of the loan whichever is the lesser period.

**Interest paid to Approved Mortgagee Exempt from Tax.**

3. (1) Subject to sub-regulation (2), the interest on a loan paid to an approved mortgagee is exempt from income tax for the prescribed period.

(2) An approved mortgagee in receipt of any interest from a loan exempted from income tax under section 7 of the Income Tax Act shall—

- (a) keep a separate account of that interest to the satisfaction of the Comptroller of Inland Revenue;
- (b) make an annual income tax return in respect of that interest to the Comptroller of Inland Revenue; and
- (c) shall forward with that return the certificate furnished to him or her pursuant to sub-section (2) of section 34 of the Income Tax Act,

and no claim for exemption in respect of such interest shall be allowed by the Comptroller of Inland Revenue if the provisions of paragraphs (a), (b) and (c) are not complied with.

**Offences and penalty.**

4. (1) Every person who—
- (a) in an application seeking approval as an approved mortgagee makes a statement which he or she knows to be false in a material particular; or
  - (b) for the purposes of any of the provisions of these regulations signs a certificate being a certificate which he or she knows to be false in any material respect,

commits an offence against these Regulations.

(2) No prosecution for any offence under these Regulations shall be begun without the sanction of the Director of Public Prosecutions.

(3) Every person found guilty of an offence against these Regulations shall be liable, on summary conviction, to a fine not exceeding three thousand dollars.

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**THIRD SCHEDULE**

*(Section 30 (9))*

**INCOME TAX (APPROVED INSTITUTIONS) ORDER**

**Citation.**

1. This Order may be cited as the Income Tax (Approved Institutions) Order.

**Approved Institutions.**

2. The following institutions are approved as charitable, religious or educational institutions of a public character for the purposes of subsection (9) of section 30 of the Income Tax Act, Cap. 20.22—

- (a) the Disaster Emergency Relief and Welfare Committee established by the St. Kitts Christian Council,
- (b) the Boy Scouts Association.

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**FOURTH SCHEDULE**

*(Section 90)*

**INCOME TAX (DOUBLE TAXATION RELIEF) (CANADA) ORDER**

**Short title.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (Canada) Order.

**Declaration.**

2. It is hereby declared—
- (a) that the arrangements specified in the Arrangement set out in the Schedule to this Order have been made with the Government of Canada with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of Canada; and
  - (b) that it is expedient that those arrangements shall have effect.

**SCHEDULE TO THE ORDER***(Regulation 2)*

Arrangement between the Government of Canada and the Government of Saint Christopher and Nevis for the avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to taxes on income.

1. (1) The Taxes which are the subject of this Arrangement are—
- (a) in Canada, the income taxes, including surtaxes, and excess profits tax imposed by Canada (hereinafter referred to as “Canadian tax”);
  - (b) in Saint Christopher and Nevis, the income tax (hereinafter referred to as “Saint Christopher and Nevis tax”).
- (2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in Canada or in Saint Christopher and Nevis after this Arrangement has come into force.
2. (1) In this Arrangement, unless the context otherwise requires—
- (a) the terms “one of the territories” and “the other territory” mean Saint Christopher and Nevis or Canada, as the context requires;
  - (b) the term “tax” means Saint Christopher and Nevis tax or Canadian tax, as the context requires;
  - (c) the term “person” includes any body of persons, corporate or not corporate;
  - (d) the term “company” includes any body corporate;
  - (e) the terms “resident of Saint Christopher and Nevis” and “resident of Canada” mean, respectively, any person who is resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and not resident in Canada for the purposes of Canadian tax, and any person who is resident in Canada for the purposes of Canadian tax and not resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax; and a company shall be regarded as resident in Saint Christopher and Nevis if its business is managed and controlled in Saint Christopher and Nevis, and as resident in Canada if its business is managed and controlled in Canada;
  - (f) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of Saint Christopher and Nevis or a person who is a resident of Canada, as the context requires;

- (g) the terms “Saint Christopher and Nevis enterprise” and Canadian enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of Saint Christopher and Nevis and an industrial or commercial enterprise or undertaking carried on by a resident of Canada; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a Saint Christopher and Nevis enterprise or a Canadian enterprise, as the context requires;
- (h) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf.

(2) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his or her business as such.

(3) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

(4) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(5) The term “industrial or commercial profits” as used in the present Arrangement, does not include income in the form of dividends, interest, rents or royalties, management charges, or remuneration for labour or personal services.

(6) In the application of the provisions of this Arrangement by Saint Christopher and Nevis or Canada, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of Saint Christopher and Nevis or Canada, as the case may be, relating to the taxes which are the subject of this Arrangement.

**3.** (1) The industrial or commercial profits of a Saint Christopher and Nevis enterprise shall not be subject to Canadian tax unless the enterprise is engaged in trade or business in Canada through a permanent establishment situated therein, and if it is so engaged, tax may be imposed on those profits by Canada, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Canadian enterprise shall not be subject to Saint Christopher and Nevis tax unless the enterprise is engaged in trade or business in Saint Christopher and Nevis through a permanent establishment situated therein, and if it is so engaged, tax may be imposed on those profits by Saint Christopher and Nevis, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in

the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be deemed to arise in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

(5) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

4. Where—

- (a) an enterprise of one of the territories 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 one of the territories and an enterprise of the other territory; and
- (c) in either case conditions are operative 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.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6. (1) The rate of Canadian tax on income (other than earned income) derived from sources within Canada by a resident of Saint Christopher and Nevis who is subject to tax in respect thereof and not engaged in trade or business in Canada through a permanent establishment situated therein, shall not exceed 15 per cent.

(2) Notwithstanding the provisions of the foregoing paragraph, dividends paid to a company which is a resident of Saint Christopher and Nevis by a Canadian company, all of whose shares (less director's qualifying shares) which have under all circumstances full voting rights are beneficially owned by the former company shall be exempt from Canadian tax:

Provided that exemption shall not be allowed if ordinarily more than one-quarter of the gross income of the Canadian company is derived from interest and dividends other than interest and dividends from any wholly-owned subsidiary company.

(3) Income (other than earned income) derived from sources within Saint Christopher and Nevis by an individual who is a resident of Canada, subject to Canadian tax in respect of the income, and not engaged in trade or business in Saint Christopher and Nevis through a permanent establishment situated therein, shall not be liable to tax in Saint Christopher and Nevis at a rate in excess of the rate applicable to a company.

7. Copyright royalties and other like payments made in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films) and derived from sources within one of the territories by a resident of the other territory who is liable to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

8. (1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory if the individual is not ordinarily resident in that other territory or is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) Any pension paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory if immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory, whether under sub-paragraph (1) of this paragraph or otherwise, or would have been exempt under that sub-paragraph if the present Arrangement had been in force at the time when the remuneration was paid.

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

9. (1) An individual who is a resident of Saint Christopher and Nevis shall be exempt from Canadian tax on profits or remuneration in respect of personal (including professional) services performed within Canada in any taxation year if—

- (a) he or she is present within Canada for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in Saint Christopher and Nevis; and
- (c) the profits or remuneration are subject to Saint Christopher and Nevis tax.

(2) An individual who is a resident of Canada shall be exempt from Saint Christopher and Nevis tax on profits or remuneration in respect of personal (including professional) services performed within Saint Christopher and Nevis in any year of assessment if—

- (a) he or she is present within Saint Christopher and Nevis for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in Canada; and
- (c) the profits or remuneration are subject to Canadian tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

10. (1) Any pension (other than a pension paid by the Government of Canada for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Canada by an individual who is a resident of Saint

Christopher and Nevis and subject to tax in respect thereof, shall be exempt from Canadian tax.

(2) Any pension (other than a pension paid by the Government of Saint Christopher and Nevis for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Saint Christopher and Nevis by an individual who is a resident of Canada and subject to Canadian tax in respect thereof, shall be exempt from Saint Christopher and Nevis tax.

(3) 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 consideration of money paid.

**11.** A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years at a university, college, school or other educational institution in the other territory shall be exempt from tax in that other territory in respect of that remuneration.

**12.** A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

**13.** (1) Subject to the provisions of the law of Saint Christopher and Nevis regarding the allowance as a credit against Saint Christopher and Nevis tax of tax payable in a territory outside Saint Christopher and Nevis, Canadian tax payable, in respect of income from sources within Canada shall be allowed as a credit against any Saint Christopher and Nevis tax, payable in respect of that income, and where such income is an ordinary dividend paid by a Canadian debtor, the credit shall take into account (in addition to any Canadian income tax chargeable directly or by deduction in respect of the dividend) the Canadian income tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the Canadian income tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(2) For the purposes of the foregoing sub-paragraph and of the aforesaid provisions of the law of Saint Christopher and Nevis, so much of the tax chargeable under the law of Canada relating to excess profits tax as is chargeable otherwise than by reference to excess profits shall be treated as income and not as excess profits tax.

(3) Subject to the provisions of the law of Canada regarding the deduction from tax payable in Canada of tax paid in a territory outside Canada, Saint Christopher and Nevis tax payable in respect of income from sources within Saint Christopher and Nevis shall be deducted from any Canadian tax payable in respect of that income.

(4) For the purposes of this paragraph, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

**14.** (1) The taxation authorities of Saint Christopher and Nevis and Canada shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any

information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons concerned with the assessment and collection of the taxes which are the subject of this Arrangement, and no information shall be exchanged which would disclose any trade secret or trade process.

(2) The taxation authorities of Saint Christopher and Nevis and Canada may consult together as may be necessary for the purpose of carrying out the provisions of the present Arrangement, and in particular, the provisions of paragraphs 3 and 4.

(3) As used in this paragraph, the term “taxation authorities” means, in the case of Canada, the Minister of National Revenue or his or her authorised representatives; and in the case of Saint Christopher and Nevis the Comptroller of Inland Revenue or his or her authorised representative.

**15.** This Arrangement shall be deemed to have had effect as on the 26th day of September, 1951, and shall as from such date have effect—

- (a) in Canada, as respects income taxes, including surtaxes, for the taxation year 1951, and subsequent years;
- (b) in Saint Christopher and Nevis, as respects income tax for the year of assessment beginning on the first day of January, 1951, and subsequent years.

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## **FIFTH SCHEDULE**

*(Section 90)*

### **INCOME TAX (DOUBLE TAXATION RELIEF) (DENMARK) ORDER**

#### **Short title.**

**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (Denmark) Order.

#### **Declaration.**

**2.** It is hereby declared—

- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of Denmark;
- (b) that it is expedient that those arrangements shall have effect.

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## **SCHEDULE 1 TO THE ORDER**

*(Section 2)*

Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income.



## ARTICLE I

1. The taxes which are the subject of the present Convention are:
  - (a) in Denmark, the national income tax (including the extraordinary company tax) (hereinafter referred to as "Danish tax");
  - (b) in the United Kingdom of Great Britain and Northern Ireland, the income tax (including surtax) and the profits tax (hereinafter referred to as "United Kingdom tax").
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Denmark or the United Kingdom subsequently to the date of signature of the present Convention.

## ARTICLE II

1. In the present Convention, unless the context otherwise requires,
  - (a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
  - (b) the term "Denmark" means the Kingdom of Denmark, excluding the Faroe Islands and Greenland;
  - (c) the terms "one of the territories" and "the other territory" mean the United Kingdom or Denmark, as the context requires;
  - (d) the term "tax" means United Kingdom tax or Danish tax, as the context requires;
  - (e) the term "person" includes any body of persons, corporate or not corporate;
  - (f) the term "company" means any body corporate;
  - (g) the terms "resident" of the United Kingdom" and "resident of Denmark" mean, respectively, any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Denmark for the purposes of Danish tax, and any person who is resident in Denmark for the purposes of Danish tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Denmark if its business is managed and controlled in Denmark;
  - (h) the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of Denmark, as the context requires;
  - (i) the terms "United Kingdom enterprise" and "Danish enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Denmark, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Danish enterprise, as the context requires;
  - (j) the term "industrial or commercial profits" includes rents or royalties in respect of cinematograph films;

- (k) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf, and in this connection,
- (i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent in the ordinary course of his or her business as such;
  - (ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
  - (iii) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

2. Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference only to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

3. In the application of the provisions of the present Convention by one of the High Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Danish tax unless the enterprise carries on a trade or business in Denmark through a permanent establishment situated therein, and if it carries on a trade or business as aforesaid, tax may be imposed on those profits by Denmark, but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Danish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein, and if it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which

it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him or her to the enterprise for acceptance.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where

- (a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or
- (b) the term "royalty" means any royalty or other amount paid as control or capital of an enterprise of one of the territories 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.

#### ARTICLE V

1. The industrial and commercial profits of a company which is a resident of Denmark shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom Profits Tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom Profits Tax only at that lower rate.

2. Where a company which is a resident of Denmark controls, directly or indirectly, not less than 50% of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom Profits Tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

3. If the industrial and commercial profits of a company which is a resident of the United Kingdom become chargeable to a form of Danish tax under which, in the case of companies which are at a lower rate than the distributed or distributable income of such companies, these industrial and commercial profits shall be charged to Danish tax only at the lower rate.

4. Where a company which is a resident of the United Kingdom beneficially owns not less than 50% of the entire ordinary share capital of a company which is a resident of Denmark, distributed or distributable income payable by the latter company to the former company shall be left out of account in computing the liability of the latter company to Danish tax at any higher rate appropriate to distributed or distributable income, and this shall apply, in particular, in computing the liability of the latter company to that part of the Danish extra-ordinary tax on companies known as Udbytterate.

#### ARTICLE VI

1. Notwithstanding the provisions of Articles III, IV and V, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

2. The Agreement dated 18th December, 1924 (SR&O No. 120 of 1925) between the United Kingdom and Denmark for the reciprocal exemption from Income Tax in certain cases of profits accruing from the business of shipping shall not have effect for any year or period for which the present Convention has effect.

#### ARTICLE VII

1. (1) Dividends paid by a company which is a resident of the United Kingdom to a resident of Denmark, who is subject to tax in Denmark in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

(2) Dividends paid by a company which is a resident of Denmark to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Denmark through a permanent establishment situated therein, shall not be chargeable to tax in addition to the tax on the profits out of which the dividends are paid at a rate exceeding 5%:

Provided that where the resident of the United Kingdom is a company which beneficially owns not less than 50% of the entire ordinary share capital of the company paying the dividends, the dividends shall be exempt from any such tax on dividends.

2. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VIII

1. Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed in respect of interest paid by a company which is a resident of one of the territories to a company which is a resident of the other territory where the latter company controls, either directly or indirectly, more than 50% cent of the entire voting power of the former company.

2. In this Article,

- (a) the term “interest” includes interest on bonds, securities, notes, debentures or on any other form of indebtedness;
  - (b) the term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
3. Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.
4. Any capital sum derived from one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE IX

Income of whatever nature derived from real property within one of the territories (except interest on mortgages secured on real property) shall be chargeable to tax in accordance with the laws of that territory, and where the said income is also chargeable to tax in the other territory, credit for the tax payable in the first-mentioned territory shall be given against the tax payable on that income in the other territory in accordance with Article XVII.

#### ARTICLE X

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

#### ARTICLE XI

1. Remuneration, including pensions, paid by, or out of funds created by, one of the High Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other High Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.
2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the High Contracting Parties for purposes of profit.

#### ARTICLE XII

1. An individual who is a resident of the United Kingdom shall be exempt from Danish tax on profits or remuneration in respect of personal (including professional) services performed within Denmark in any year of assessment, if
  - (a) he or she is present within Denmark for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) the services are performed for or on behalf of a resident of the United Kingdom; and

- (c) the profits or remuneration are subject to United Kingdom tax.
2. An individual who is a resident of Denmark shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment, if
- (a) he or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) the services are performed for or on behalf of a resident of Denmark; and
  - (c) the profits or remuneration are subject to Danish tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artistes, musicians and athletes.

#### ARTICLE XIII

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within Denmark by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Danish tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Denmark and subject to Danish tax in respect thereof, shall be exempt from United Kingdom tax.
3. 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 XIV

A professor or teacher from one of the territories who receives remuneration from teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

#### ARTICLE XV

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

#### ARTICLE XVI

1. Individuals who are residents of Denmark shall be entitled to the same personal allowances, relief and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom;
2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances and relief for the purposes of Danish tax as Danish nationals not resident in Denmark.

## ARTICLE XVII

1. The laws of the High Contracting Parties shall continue to govern the taxation of income arising in either of the territories, except where express provision to the contrary is made in this Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs.

2. 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, Danish tax payable, whether directly or by deduction, in respect of income from sources within Denmark shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Denmark, the credit shall take into account (in addition to any Danish tax appropriate to the dividend) the Danish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Danish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

3. United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a deduction from the Danish tax payable in respect of that income:

Provided that the amount of the deduction shall not exceed the portion of the Danish tax which such income chargeable to Danish tax bears to the total income chargeable to Danish tax, and for the purposes of this paragraph only, the expression "Danish tax" shall include the Danish inter-municipal income tax.

4. (1) In the case of a person who is resident in the United Kingdom for the purposes of United Kingdom tax and is also resident in Denmark for the purposes of Danish tax, the provisions of paragraph 2 of this Article shall apply in relation to income which that person derives from sources within Denmark, and the provisions of paragraph 3 of this Article shall apply in relation to income which he or she derives from sources within the United Kingdom.

(2) If such person derives income from sources outside both the United Kingdom and Denmark, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the High Contracting Parties and the territory from which the income is derived).

(3) A credit shall be allowed in accordance with paragraph 2 of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within the United Kingdom bears to the sum of his or her income from sources within the United Kingdom and his or her income from sources within Denmark; and a deduction shall be allowed in accordance with paragraph 3 of this Article against any Danish tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within Denmark bears to the sum of his or her income from sources within the United Kingdom and his or her income from sources within Denmark.

5. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose

services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVIII

1. (1) The taxation authorities of the High Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention, and no information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term “taxation authorities” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives; in the case of Denmark, the Director-General of Taxation or his or her authorised representative; and, in the case of any territory to which the present Convention is extended under Article XX, the competent authority for the administration is such territory of the taxes to which the present Convention applies.

#### ARTICLE XIX

1. The nationals of one of the High Contracting Parties shall not be subjected in the territory of the other High Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

2. The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or partnership, shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like profits or capital.

3. The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits and capital.

4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the High Contracting Parties to grant to nationals of the other High Contracting Party who are not resident in the territory of the former Party the same personal allowances, relief and reductions for tax purposes as are granted to its own nationals.

5. In this Article, the term “nationals” means,

- (a) in relation to Denmark, all Danish citizens and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Denmark or in any Danish territory to



which the present Convention applies by reason of extension made under Article XX;

- (b) in relation to the United Kingdom, all British subjects and British protected persons residing in the United Kingdom or any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in any British territory to which the present Convention applies.

6. In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XX

1. The present Convention may be extended, either in its entirety or with modification, to any territory of one of the High Contracting Parties to which this Article applies and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.

2. The termination in respect of Denmark or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

3. The territories to which this Article applies are,

- (a) in relation to the United Kingdom, any territory other than the United Kingdom for whose international relations the United Kingdom is responsible;
- (b) in relation to Denmark, any territory other than Denmark for whose international relations Denmark is responsible.

#### ARTICLE XXI

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

2. Upon exchange of ratifications the present Convention shall have effect, in Denmark, as respects Danish tax for any taxation year beginning on or after the 1st April, 1949, and in the United Kingdom,

- (a) as respects income tax for any year of assessment beginning on or after the 6th April, 1949;
- (b) as respects surtax tax for any year of assessment beginning on or after the 6th April, 1948;
- (c) as respects profits tax in respect of the following profits:
  - (i) profits arising in any chargeable accounting period beginning on or after the 1st April, 1949;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

- (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the 6th April, 1949.

## ARTICLE XXII

The present Convention shall continue in effect indefinitely but either of the High Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1953, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective, in Denmark, as respects Danish tax for any taxation year beginning on or after the 1st April in the calendar year next following that in which the notice is given, and in the United Kingdom,

- (a) as respects income tax for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;
- (b) as respects surtax tax for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given;
- (c) as respects profits tax in respect of the following profits:
  - (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
  - (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the next following calendar year.

## SCHEDULE 2 TO THE ORDER

### *(Section 2)*

#### **Application.**

1. (1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—

- (a) as if the contracting parties were the Government of Saint Christopher and Nevis and the Government of Denmark;
- (b) as if the tax concerned in the case of Saint Christopher and Nevis were the tax on income imposed by the Income Tax Act, as amended;
- (c) as if the tax concerned in the case of Denmark included the defence tax;
- (d) as if references to the date of signature were references to the 22nd day of December, 1954;
- (e) as if references to the 6th day of April were references to the 1st day of January.

(2) The extension shall have effect in Saint Christopher and Nevis as respects tax for the year of assessment 1954 and for subsequent years of assessment, (and will have effect in Denmark, as respects Danish Tax for any taxation year beginning on or after the 1st day of April, 1954).

(3) The extension shall continue in effect indefinitely but may be terminated as respects Saint Christopher and Nevis by written notice of termination given on or before the 30th June in any calendar year not earlier than the year 1957 by either of the High Contracting Parties to the Convention to the other High Contracting Party, through diplomatic channels, and in such event the extension shall cease to have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, (and will cease to have effect in Denmark as respects Danish tax for any taxation year beginning on or after the first day of April in the calendar year next following that in which the notice is given).

#### **Modifications.**

2. (1) In Article VII (1) of the Convention the words “exempt from the United Kingdom surtax” shall be understood, for the purposes of this extension, as though they read “shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company”.

(2) In Articles VIII and IX all references to interest shall be deemed to be deleted.

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### **SIXTH SCHEDULE**

*(Section 90)*

#### **INCOME TAX (DOUBLE TAXATION RELIEF) (NEW ZEALAND) ORDER**

##### **Short title.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (New Zealand) Order.

##### **Declaration.**

2. It is hereby declared—

(a) that the arrangements specified in the Arrangement set out in the Schedule to this Order have been made with the Government of New Zealand with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of New Zealand; and

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

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**SCHEDULE TO THE ORDER***(Section 2)*

Arrangement between the Government of New Zealand and the Government of Saint Christopher and Nevis for the Avoidance of Double Taxation and the prevention of Fiscal Evasion with respect to Taxes on Income.

1. (1) The Taxes which are the subject of this Arrangement are—
  - (a) in New Zealand, the Income Tax and the social security charge (hereinafter referred to as “New Zealand tax”);
  - (b) in Saint Christopher and Nevis, the Income Tax (hereinafter referred to as Saint Christopher and Nevis tax”).
- (2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in New Zealand or Saint Christopher and Nevis after this Arrangement has come into force.
2. (1) In this Arrangement, unless the context otherwise requires—
  - (a) the term “New Zealand” includes all islands and territories within the limits thereof for the time being, including the Cook Islands;
  - (b) the terms “one of the territories” and “the other territory” means New Zealand or Saint Christopher and Nevis, as the context requires;
  - (c) the term “tax” means New Zealand tax or Saint Christopher and Nevis tax, as the context requires;
  - (d) the term “person” includes any body of persons, corporate or not corporate;
  - (e) the term “company” includes any body corporate;
  - (f) the terms “resident of New Zealand” and “resident of Saint Christopher and Nevis” mean, respectively, any person who is resident in New Zealand for the purposes of New Zealand tax and not resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and any person who is resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and not resident in New Zealand for the purposes of New Zealand tax; and a company shall be regarded as resident in New Zealand if its business is managed and controlled in New Zealand and as resident in Saint Christopher and Nevis if its business is managed and controlled in Saint Christopher and Nevis;
  - (g) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of New Zealand or a person who is a resident of Saint Christopher and Nevis, as the context requires;
  - (h) the terms “New Zealand enterprise” and “Saint Christopher and Nevis enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of New Zealand and an industrial or commercial enterprise or undertaking carried on by a resident of Saint Christopher and Nevis; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a New Zealand enterprise or a Saint Christopher and Nevis enterprise, as the context requires;

- (i) the term “industrial or commercial enterprise or undertaking” includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term “industrial or commercial profits” includes profits from such activities or business, but does not include income in the form of dividends, interest, rents, royalties, management charges, or remuneration for personal services;
- (j) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management, factory, mine, farm, or other fixed place of business, but does not include an agency in the other territory unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or regularly fills orders on its behalf from a stock of goods or merchandise in that other territory.

(2) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his or her business as such and receiving remuneration, in respect of those dealings at a rate not less than that customary in the class of business in question.

(3) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

(4) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(5) The terms “New Zealand tax” and “Saint Christopher and Nevis tax” as used in the present Arrangement, do not include any tax payable in New Zealand or Saint Christopher and Nevis which represents a penalty under the law of New Zealand or Saint Christopher and Nevis relating to the taxes which are the subject of the present Arrangement.

(6) In the application of the provisions of this Arrangement by New Zealand or Saint Christopher and Nevis, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of New Zealand or, as the case may be, Saint Christopher and Nevis, relating to the taxes which are the subject of this Arrangement.

**3.** (1) The industrial or commercial profits of a New Zealand enterprise shall not be subject to Saint Christopher and Nevis tax unless the enterprise is engaged in trade or business in Saint Christopher and Nevis through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Saint Christopher and Nevis, but only on so much of them as is attributable to that permanent establishment:

Provided that nothing in this paragraph shall affect any provisions of the law of New Zealand regarding the taxation of income from the business of insurance.

(2) The industrial or commercial profits of a Saint Christopher and Nevis enterprise shall not be subject to New Zealand tax unless the enterprise is engaged in trade or business in New Zealand through a permanent establishment situated therein.

If it is so engaged, tax may be imposed on those profits by New Zealand, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities and its dealings with the enterprise of which it is a permanent establishment were dealings at arm's length with that enterprise or an independent enterprise; and the profits so attributed shall be deemed to be income derived from sources in that other territory.

(4) If the information available to the taxation authority concerned is inadequate to determine the profits to be attributed to the permanent establishment, nothing in sub-paragraph 3 shall affect the application of the law of either territory in relation to the liability of the permanent establishment to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the taxation authority of that territory:

Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in sub-paragraph (3) and this sub-paragraph.

(5) Profits derived by an enterprise of one of the territories from sale, under contracts concluded in that territory, of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent of the enterprise in that other territory, and transmitted by him or her to the enterprise for acceptance.

(6) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

4. (1) Where—

- (a) an enterprise of one of the territories 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 one of the territories and an enterprise of the other territory; and
- (c) in either case conditions are operative between the two enterprises, in their commercial or financial relations, which differ from those which might be expected to be operative between independent enterprises dealing at arm's length with one another,

then, if by reason of those conditions profits which might be expected to accrue to one of the enterprises do not accrue to that enterprise, there may be included in the profits of that enterprise the profits which would have accrued to it if it were an independent enterprise and its dealings with the other enterprise were dealings at arm's length with that enterprise or an independent enterprise.

(2) Profits included in the profits of an enterprise of one of the territories under sub-paragraph (1) of this paragraph shall be deemed to be income derived from sources in that territory and shall be taxed accordingly.

(3) If the information available to the taxation authority concerned is inadequate to determine, for the purposes of sub-paragraph (1) of this paragraph, the profits which might be expected to accrue to an enterprise, nothing in that paragraph shall affect the application of the law of either territory in relation to the liability of that enterprise to pay tax on an estimate by the taxation authority of that territory:

Provided that such discretion shall be exercised or such estimate shall be made, so far as the information available to the taxation authority permits, in accordance with the principle stated in that sub-paragraph.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6. (1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company:

Provided that dividends paid by a company resident in New Zealand to a person who is resident in Saint Christopher and Nevis may be included in that person's total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person other than such dividends.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits, or income so derived.

7. (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph, the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trademark, or other like property, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of timber or other natural resources or rents or royalties in respect of motion picture films.

8. (1) Remuneration (other than pensions) paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the territory of the Government of the other territory if the individual is not ordinarily resident in that other territory or is ordinarily resident in that other territory solely for the purpose of rendering those services.

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

**9.** (1) An individual who is a resident of Saint Christopher and Nevis shall be exempt from New Zealand tax on profits or remuneration in respect of personal (including professional) services performed within New Zealand in any year of assessment if—

- (a) he or she is present within New Zealand for a period not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in Saint Christopher and Nevis; and
- (c) the profits or remuneration are subject to Saint Christopher and Nevis tax.

(2) An individual who is a resident of New Zealand shall be exempt from Saint Christopher and Nevis tax on profits or remuneration in respect of personal (including professional) services performed within Saint Christopher and Nevis in any year of assessment if—

- (a) he or she is present within Saint Christopher and Nevis for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in New Zealand; and
- (c) the profits or remuneration are subject to New Zealand tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

**10.** (1) Any pension or annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and liable to tax in that other territory in respect thereof, shall be exempt from tax in the first mentioned territory.

(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 consideration of money paid.

**11.** A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory shall be exempt from tax in that other territory in respect of that remuneration.

**12.** A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in the other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

**13.** Income of a person who is a resident of Saint Christopher and Nevis (other than dividends paid by a company resident in New Zealand) which is exempt from New Zealand tax under any provision of the present Arrangement shall not be included in that person’s total income for the purposes of determining the amount of any New Zealand tax payable in respect of income of that person which is assessable to New Zealand tax.

**14.** (1) Subject to the provisions of the law of Saint Christopher and Nevis regarding the allowance as a credit against Saint Christopher and Nevis tax of tax payable in a territory outside Saint Christopher and Nevis, New Zealand tax payable, whether directly or by deduction, in respect of income from sources within New Zealand shall be allowed as a credit against any Saint Christopher and Nevis tax



payable in respect of that income, and where such income is an ordinary dividend paid by a company resident in New Zealand, the credit shall take into account the New Zealand tax payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the New Zealand tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(2) For the purposes of this paragraph any amount which is included in a person's taxable income under any provision of the law of New Zealand regarding the taxation of income from the business of insurance shall be deemed to be derived from sources in New Zealand.

(3) Where the New Zealand tax is payable in respect of income derived from sources in Saint Christopher and Nevis by a person who is a resident of New Zealand, being income in respect of which Saint Christopher and Nevis tax is payable, whether directly or by deduction, the Saint Christopher and Nevis tax so payable (reduced by the amount of any relief or repayment attributable to that income to which that person is entitled under the law of Saint Christopher and Nevis) shall, subject to such provisions (which shall not affect the general principle hereof) as may be enacted in New Zealand, be allowed as a credit against the New Zealand tax (other than the social security charge) payable in respect of that income:

Provided that where the income is a dividend paid by a company resident in Saint Christopher and Nevis the credit shall be allowed only if the recipient elects for the purposes of this sub-paragraph to have the amount of such dividend together with Saint Christopher and Nevis tax (as so reduced) included in his or her assessable income for the purposes of New Zealand tax.

(4) Where such income is an ordinary dividend paid by a company resident in Saint Christopher and Nevis, the credit shall take into account (in addition to any Saint Christopher and Nevis income tax appropriate to the dividend) the Saint Christopher and Nevis profits tax payable by the company in respect of its profits, and where it is a dividend paid on a participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(5) For the purposes of this paragraph, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

**15.** (1) The taxation authorities of New Zealand and Saint Christopher and Nevis shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons concerned with the assessment and collection of the taxes which are the subject of this Arrangement, and no information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this paragraph, the term "taxation authorities" means, in the case of New Zealand, the Commissioner of Taxes or his or her authorised representative; and in the case of Saint Christopher and Nevis the Comptroller of Inland Revenue or his or her authorised representative.

**16.** This Arrangement shall come into force on the 11th day of August, 1951, and shall thereupon have effect—

- (a) in New Zealand—
  - (i) as respects income tax for the year of assessment beginning on the first day of April, 1951, and subsequent years;
  - (ii) as respects social security charge on salaries and wages as from the first day of April, 1951;
  - (iii) as regards social security charge on income other than salaries and wages as from the first day of April, 1950, and subsequent years;
- (b) in Saint Christopher and Nevis, as respects income tax for the year of assessment beginning on the first day of January, 1951, and subsequent years.

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## SEVENTH SCHEDULE

*(Section 90)*

### INCOME TAX (DOUBLE TAXATION RELIEF) (NORWAY) ORDER

#### Short title.

**1.** This Order may be cited as the Income Tax (Double Taxation Relief) (Norway) Order.

#### Declaration.

- 2.** It is hereby declared—
- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of Norway;
  - (b) that it is expedient that those arrangements shall have effect.

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## SCHEDULE 1 TO THE ORDER

*(Section 2)*

Convention between the Government of the United Kingdom and the Norwegian Government for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income.

### ARTICLE I

- 1.** The taxes which are the subject of the present Convention are:
- (a) in Norway, the national income tax, including the national defence tax on income, the communal income tax, the old age pension tax, the war pension tax, and the seamen's tax, and, for the purposes of Article

XIX, the national property tax, including the national defence tax on property (hereinafter referred to as "Norwegian tax");

- (b) in the United Kingdom of Great Britain and Northern Ireland, the income tax (including surtax) and the profits tax (hereinafter referred to as "United Kingdom tax").

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Norway or the United Kingdom subsequently to the date of signature of the present Convention.

## ARTICLE II

1. In the present Convention, unless the context otherwise requires,

- (a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
- (b) the term "Norway" means the Kingdom of Norway, excluding Spitsbergen and Bear Island and Jan Mayan and the Norwegian dependencies outside Europe;
- (c) the terms "one of the territories" and "the other territory" mean the United Kingdom or Norway, as the context requires;
- (d) the term "tax" means United Kingdom tax or Norwegian tax, as the context requires;
- (e) the term "person" includes any body of persons, corporate or not corporate;
- (f) the term "company" means any body corporate;
- (g) the terms "resident of the United Kingdom" and "resident of Norway" mean, respectively, any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Norway for the purposes of Norwegian tax, and any person who is resident in Norway for the purposes of Norwegian tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Norway if its business is managed and controlled in Norway;
- (h) the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom or a person who is a resident of Norway, as the context requires;
- (i) the terms "United Kingdom enterprise" and "Norwegian enterprise" mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Norway, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Norwegian enterprise, as the context requires;
- (j) the term "industrial or commercial profits" includes rents or royalties in respect of cinematograph films;
- (k) the term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management,

factory, or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf, and in this connection,

- (i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent in the ordinary course of his or her business as such;
- (ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
- (iii) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

2. Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and 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, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

3. In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Norwegian tax unless the enterprise carries on a trade or business in Norway through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Norway, but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Norwegian enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar

conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him or her to the enterprise for acceptance.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where

- (a) an enterprise of one of the territories 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 an enterprise of one of the territories 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.

#### ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

#### ARTICLE VI

1. (1) Dividends paid by a company which is a resident of the United Kingdom to a resident of Norway, who is subject to tax in Norway in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

(2) Norwegian tax on dividends paid by a company which is a resident of Norway to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Norway through a permanent establishment situated therein, shall not exceed 5%:

Provided that where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50% of the entire voting power of the company paying the dividends, the dividends shall be exempt from Norwegian tax.

2. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that

other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VII

1. Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.
2. In this Article,
  - (a) the term interest” includes interest on bonds, securities, notes, debentures or on any other form of indebtedness;
  - (b) the term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
3. Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.
4. Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

#### ARTICLE VIII

1. Where under the provisions of the present Convention a resident of the United Kingdom is exempt or entitled to relief from Norwegian tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the United Kingdom.
2. Norwegian tax on undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XVI.

#### ARTICLE IX

1. Remuneration, including pensions, paid by, or out of funds created by, one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.
2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

## ARTICLE X

1. An individual who is a resident of the United Kingdom shall be exempt from Norwegian tax on profits or remuneration in respect of personal (including professional) services performed within Norway in any year of assessment if
  - (a) he or she is present within Norway for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) the services are performed for or on behalf of a resident of the United Kingdom; and
  - (c) the profits or remuneration are subject to United Kingdom tax.
2. An individual who is a resident of Norway shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment, if
  - (a) he or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) the services are performed for or on behalf of a resident of the Norway; and
  - (c) the profits or remuneration are subject to Norwegian tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artistes, musicians and athletes.

## ARTICLE XI

A resident of one of the territories shall be exempt from tax in the other territory in respect of remuneration for services performed on ships or aircraft operating outside the other territory.

## ARTICLE XII

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article IX) and any annuity, derived from sources within Norway by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Norwegian tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article IX) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Norway and subject to Norwegian tax in respect thereof, shall be exempt from United Kingdom tax.
3. 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 XIII

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

## ARTICLE XIV

A student or business apprentice from one of the territories who, is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

## ARTICLE XV

1. Individuals who are residents of Norway shall be entitled to the same personal allowances, relief and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.
2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, relief and reductions for the purposes of Norwegian tax as Norwegian nationals not resident in Norway.

## ARTICLE XVI

1. (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, Norwegian tax payable, whether directly or by deduction, in respect of income from sources within Norway shall be allowed as a credit against the United Kingdom tax payable in respect of that income.

(2) Where such income is an ordinary dividend paid by a company resident in Norway, the credit shall take into account (in addition to any Norwegian tax appropriate to the dividend) the Norwegian tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Norwegian tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate:

Provided for the purposes of this paragraph of this Article, the credit to be allowed for Norwegian communal income tax shall not exceed one-half of the said communal tax.

2. (1) Where United Kingdom tax is payable, whether directly or by deduction, in respect of income from sources within the United Kingdom, and that income is chargeable also to Norwegian tax, the Norwegian tax payable by the person entitled to such income on his or her total income chargeable to Norwegian tax shall be reduced by an amount which bears the same proportion to that Norwegian tax as the income from sources within the United Kingdom bears to the said total income:

Provided that the Norwegian Ministry of Finance and Customs may decide that the deduction shall not exceed the amount of the United Kingdom tax.

(2) Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the deduction, in the event that it is restricted to the amount of the United Kingdom tax, shall take into account (in addition to the United Kingdom tax appropriate to the dividend) the United Kingdom profits tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate

3. Where income is derived from sources outside both the United Kingdom and Norway by a person who is resident in the United Kingdom for the purposes of



United Kingdom tax and is also resident in Norway for the purposes of Norwegian tax, the income may be taxed in both countries (subject to any Convention which may exist between either of the Contracting Parties and the territory or territories from which the income is derived). A credit shall be allowed in accordance with paragraph 1 of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Norwegian tax, whichever is the less, which such person's income from sources within the United Kingdom bears to the sum of his or her income from sources within the United Kingdom and his or her income from sources within Norway; and a deduction shall be allowed in accordance with paragraph 2 of this Article against any Norwegian tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Norwegian tax, whichever is the less, which such person's income from sources within Norway bears to the sum of his or her income from sources within the United Kingdom and his or her income from sources within Norway.

4. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, except that the remuneration of a director of a company shall be deemed to be income from sources within the territory in which the company is resident, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVII

1. The taxation authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives; in the case of Norway, the Ministry of Finance and Customs; and, in the case of any territory to which the present Convention is extended under Article XX, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XVIII

The Agreement of 18th December, 1924 (SR&O No.103 of 1925) between Great Britain and Norway for the reciprocal exemption from income tax in certain cases of profits accruing from business of shipping, and the Agreement of 21st December, 1938 (SR & O No. 1319 of 1939) between the United Kingdom and Norway for the reciprocal exemption from income tax in certain cases of profits arising through agencies, shall not have effect,

- (a) in Norway, for any period for which the present Convention has effect in that country;
- (b) in the United Kingdom, in relation to any tax for any period for which the present Convention has effect as respects that tax.

## ARTICLE XIX

1. The nationals of one of the Contracting Parties shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.
2. The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits or capital.
3. The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits and capital.
4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the Contracting Parties to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, relief and reductions for tax purposes as are granted to its own nationals.
5. In this Article, the term “nationals” means,
  - (a) in relation to Norway, all Norwegian citizens and all judicial persons domiciled in Norway;
  - (b) in relation to the United Kingdom, all British subjects and British protected persons residing in the United Kingdom or any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships and associations deriving their status as such from the law in force in any British territory to which the present Convention applies.
6. In this Article, the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

## ARTICLE XX

1. The present Convention may be extended, either in its entirety or with modification, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.
2. The termination in respect of Norway or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

## ARTICLE XXI

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at Oslo as soon as possible.

2. The present Convention shall enter into force upon exchange of ratifications and the foregoing provisions thereof shall have effect, in Norway, for the taxable years beginning on or after 1st January, 1950, and in the United Kingdom,

- (a) as respects income tax for any year of assessment beginning on or after the 6th April, 1950;
- (b) as respects surtax for any year of assessment beginning on or after the 6th April, 1949;
- (c) as respects profits tax in respect of the following profits:
  - (i) profits arising in any chargeable accounting period beginning on or after 1st April, 1950;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
  - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the 6th April, 1950.

#### ARTICLE XXII

The present Convention shall continue in force indefinitely, but either of the Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1954, give to the other Contracting Party, through diplomatic channels, written notice of termination provided that such notice of termination may be given in any year before 1954 if there should be any important change in the law of the other Contracting Party affecting the application of Article XVI, and, in such event, the present Convention shall cease to be effective, in Norway, for the taxable years beginning on or after the 1st January in the calendar year next following that in which the notice is given, and in the United Kingdom,

- (a) as respects income 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;
- (b) as respects surtax, for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and
- (c) as respects profits tax, in respect of the following profits:
  - (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
  - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
  - (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

**SCHEDULE 2 TO THE ORDER***(Section 2)***Application.**

1. (1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—

- (a) as if the Contracting Parties were the Government of Saint Christopher and Nevis and the Government of Norway, and as if the tax concerned in the case of Saint Christopher and Nevis were the tax on income imposed by the Income Tax Act, as amended;
- (b) as if references to the date of signature were references to the 18th day of May, 1955.

(2) The extension shall have effect in Saint Christopher and Nevis as respects tax for the year of assessment 1955 and for subsequent years of assessment, and will have effect in Norway, as respects Norwegian tax for the taxable years beginning on or after 1st January, 1954.

(3) The extension shall continue in effect indefinitely but may be terminated as respects Saint Christopher and Nevis by written notice of termination given on or before the 30th June in any calendar year not earlier than the year 1957 by either of the Contracting Parties to the Convention to the other Contracting Party, through diplomatic channels, and in such event the extension shall cease to have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, and will cease to have effect in Norway as respects Norwegian tax for the taxable years beginning on or after 1st January in the calendar year in which the notice is given.

**Modifications.**

2. (1) In paragraph 1 of Article VI of the Convention the words “shall be exempt from the United Kingdom surtax” shall be understood, for the purposes of this extension, as though they read “shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company”.

(2) In Article VII all references to interest shall be deemed to be deleted.

(3) In paragraph 2 of Articles XVI references to income (except in the phrase “total income”) shall be deemed not to include interest.

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**EIGHTH SCHEDULE***(Section 90)***INCOME TAX (DOUBLE TAXATION RELIEF) (SWEDEN) ORDER****Short title.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (Sweden) Order.

**Declaration.**

2. It is hereby declared—
- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order have been made with the Government of Sweden;
  - (b) that it is expedient that those arrangements should have effect.

**SCHEDULE 1 TO THE ORDER***(Section 2)*

Convention between the United Kingdom of Great Britain and Northern Ireland and Sweden for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

**ARTICLE I**

1. The taxes which are the subject of the present Convention are
- (a) in Sweden, the State income tax (including coupon tax) and the tax on the undistributed profits of companies (Ersattningsskatt), and for the purposes of Articles XXII, paragraph 3, and XXIII to XXV inclusive, the State capital tax (hereinafter referred to as “Swedish tax”);
  - (b) in the United Kingdom of Great Britain and Northern Ireland, the income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Sweden subsequently to the date of signature of the present Convention.

**ARTICLE II**

1. In the present Convention, unless the context otherwise requires,
- (a) the term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
  - (b) the terms “one of the territories and “the other territory” mean the United Kingdom or Sweden, as the context requires;
  - (c) the term “tax” means United Kingdom tax or Swedish tax, as the context requires;
  - (d) the term “person” includes any body of persons, corporate or not corporate;
  - (e) the term “company” means any body corporate;
  - (f) the terms “resident of the United Kingdom” and “resident of Sweden” mean, respectively, any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Sweden for the purposes of Swedish tax, and any person who is resident in Sweden for the purposes of Swedish tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company

shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom, and as resident in Sweden if its incorporated under the laws of Sweden and its business is not managed and controlled in the United Kingdom, or if it is not so incorporated but its business is managed and controlled in Sweden;

- (g) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Sweden, as the context requires;
- (h) the terms “United Kingdom enterprise” and “Swedish enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Sweden, and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Swedish enterprise, as the context requires;
- (i) the term “industrial or commercial profits” includes rents or royalties in respect of cinematograph films;
- (j) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation, and it also includes a place where building construction is carried on by contract for a period of at least one year, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of the enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf, and in this connection,
  - (i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his or her business as such;
  - (ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
  - (iii) the fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

2. Where under this Convention any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and 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, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

3. In the application of the provisions of the present Convention by one of the High Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

#### ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swedish tax unless the enterprise carries on a trade or business in Sweden through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Sweden, but only on so much of them as is attributable to that permanent establishment.

2. The industrial or commercial profits of a Swedish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

3. Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

#### ARTICLE IV

Where

- (a) an enterprise of one of the territories 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 one of the territories and an enterprise of the other territory;

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

## ARTICLE V

1. The industrial and commercial profits of a Swedish enterprise shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom profits tax only at that lower rate.
2. Where a company which is a resident of Sweden controls, directly or indirectly, not less than 50% of the entire voting power of a company which is a resident of the United Kingdom, distribution by the latter company to the former company shall be left out of account in computing United Kingdom profits tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

## ARTICLE VI

Notwithstanding the provisions of Articles III, IV and V, profits which a resident of one of the territories derives from operating ships and aircraft shall be exempt from tax in the other territory.

## ARTICLE VII

1. (1) Dividends paid by a company which is a resident of the United Kingdom to a resident of Sweden, who is subject to tax in Sweden in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

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- (2) The Swedish coupon tax on dividends paid by a company which is a resident of Sweden to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Sweden through a permanent establishment situated therein, shall not exceed 5%:

Provided that where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50% of the entire voting power of the company paying the dividends, the dividends shall be exempt from coupon tax.

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2. Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

## ARTICLE VIII

1. Any interest derived from sources within one of the territories by a resident of other territory who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

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2. In this Article, the term "interest" includes interest on bonds, securities, notes, debentures or any other form of indebtedness.

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3. Where any interest exceeds a fair and reasonable consideration in respect of the indebtedness for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest as represents such fair and reasonable consideration.



## ARTICLE IX

1. Any royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.
2. In this Article, the term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
3. Where any royalty exceeds a fair and reasonable consideration in respect of the rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the royalty as represents such fair and reasonable consideration.
4. Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory.

## ARTICLE X

1. Income of whatever nature derived from real property within the territory of the United Kingdom (other than income from mortgages or bonds secured by real property) by a resident of Sweden who is subject to tax in the United Kingdom in respect thereof shall be exempt from tax in Sweden.
2. Any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources within the territory of the United Kingdom to a resident of Sweden who is subject to tax in the United Kingdom in respect thereof, shall be exempt from tax in Sweden.
3. Swedish tax payable in respect of income of the kind referred to in the preceding paragraphs, derived from sources within Sweden by a resident of the United Kingdom who is liable to tax in the United Kingdom in respect thereof, shall, in accordance with Article XIX, be allowed as a credit against the United Kingdom tax payable in respect of that income.

## ARTICLE XI

1. Where under the provisions of this Convention a resident of the United Kingdom is exempt or entitled to relief from Swedish tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the United Kingdom.
2. Swedish tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XIX.

## ARTICLE XII

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

## ARTICLE XIII

1. Remuneration or pensions paid by, or out of funds created by, one of the High Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other High Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.
2. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the High Contracting Parties for purposes of profit.

## ARTICLE XIV

1. An individual who is a resident of the United Kingdom shall be exempt from Swedish tax on profits or remuneration in respect of personal (including professional) services performed within Sweden in any year of assessment if
  - (a) he or she is present within Sweden for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) the services are performed for or on behalf of a resident of the United Kingdom; and
  - (c) the profits or remuneration are subject to United Kingdom tax.
2. An individual who is a resident of Sweden shall exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if
  - (a) he or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) the services are performed for or on behalf of a resident of Sweden; and
  - (c) the profits or remuneration are subject to Swedish tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artistes, musicians and athletes.

## ARTICLE XV

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XIII) and any annuity, derived from sources within Sweden by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Swedish tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XIII) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Sweden and subject to Swedish tax in respect thereof, shall be exempt from United Kingdom tax.
3. 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 XVI

A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college or other establishment for further education in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

## ARTICLE XVII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

## ARTICLE XVIII

1. Individuals who are residents of Sweden shall be entitled to the same personal allowances, relief and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.
2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, relief and reductions for the purposes of Swedish tax as those to which Swedish nationals not resident in Sweden may be entitled.

## ARTICLE XIX

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, Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Sweden shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company which is a resident of Sweden the credit shall take into account (in addition to any Swedish tax appropriate to the dividend) the Swedish tax payable by the company in respect of its profit; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Swedish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

2. Income from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swedish tax:

Provided that where such income is a dividend paid by a company being a resident of the United Kingdom to a person resident in Sweden, not being a company, whether or not he or she is also resident in the United Kingdom, Swedish tax may be charged on the amount of the dividend after deduction of United Kingdom income tax, but the amount of Swedish tax chargeable shall be reduced by a sum equal to 20% of the amount of the dividend so charged.

3. Where income is derived from sources outside both the United Kingdom and Sweden by a person who is resident in the United Kingdom for the purposes of United Kingdom tax and also resident in Sweden for the purposes of Swedish tax, the income may be taxed in both countries (subject to any Convention which may exist between either of the High Contracting Parties and the territory or territories from which the income is derived), but the Swedish tax on that income shall be limited to tax on the proportion of such income represented by the proportion which such

person's income from sources in Sweden bears to the sum of his or her income from sources in Sweden and of his or her income from sources in the United Kingdom, and the United Kingdom tax on that income shall be reduced by a credit, in accordance with paragraph 1 of this Article, for the Swedish tax on the proportion of that income so computed.

4. The special tax payable in Sweden by public entertainers such as theatre and radio artistes, musicians and athletes (*bevillningsavgift* for *vissa offentliga forestallningar*) shall be regarded, for the purposes of this Article, as Swedish tax.

5. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

6. The graduated rate of Swedish tax to be imposed on residents of Sweden may be calculated as though income exempted under this Convention were included in the amount of the total income.

#### ARTICLE XX

1. The taxation authorities of the High Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue; in the case of Sweden, the Finance Ministry; and, in the case of any territory to which the present Convention is extended under Article XXIII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XXI

The following agreements between the United Kingdom and Sweden shall not have effect for any period for which the present Convention has effect, that is to say,

- (a) the agreement dated 19th December, 1924, for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping;
- (b) the agreement dated 6th July, 1931, for the reciprocal exemption from taxes in certain cases of profits arising through agencies.

#### ARTICLE XXII

1. The nationals of one of the High Contracting Parties shall not be subjected in the territory of the other High Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

2. The enterprises of one of the territories shall not be subjected in the other territory, in respect of profits attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory are or may be subjected in respect of the like profits.
3. An individual or company being a resident of one of the territories shall not be subject to any tax on capital in the other territory which is other, higher, or more burdensome than the tax on capital to which an individual or, as the case may be, a company, being a resident of that other territory is or may be subjected.
4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the High Contracting Parties to grant to nationals of the other High Contracting Party who are not resident in the territory of the former Party the same personal allowances, relief and reductions for tax purposes as are granted to its own nationals.
5. In this Article, the term “nationals” means,
  - (a) in relation to Sweden, all Swedish subjects and all legal persons, partnerships and associations deriving their status as such from the law in force in Sweden;
  - (b) in relation to the United Kingdom, all British subjects and British-protected persons residing in the United Kingdom or any British territory to which the present Convention applies by reason of extension made under Article XXIII and all legal persons, partnerships and associations deriving their status as such from the law in force in any British territory to which the present Convention applies.
6. In this Article, the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XXIII

1. The present Convention may be extended, either in its entirety or with modifications, to any territory for whose foreign relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.
2. The termination in respect of Sweden or the United Kingdom of the present Convention under Article XXV shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

#### ARTICLE XXIV

1. The present Convention shall be ratified by the High Contracting Parties. Ratification by His Majesty the King of Sweden shall be subject to the consent of the Riksdag.
2. The instruments of ratification shall be exchanged at Stockholm as soon as possible.
3. (1) Upon exchange of ratifications the present Convention shall have effect, in Sweden,

- (a) as respects tax on income which is assessed in or after the calendar year beginning on 1st January, 1950, being income for which preliminary tax is payable during the period 1st March, 1949, to 28th February, 1950; or any succeeding period;
  - (b) as respects coupon tax payable on or after 1st January, 1949;
  - (c) as respects capital tax which is assessed in or after the calendar year beginning on 1st January, 1950.
- (2) Upon exchange of ratifications the present Convention shall have effect, in the United Kingdom,
- (a) as respects income tax for any year of assessment beginning on or after 6th April, 1949;
  - (b) as respects surtax for any year of assessment beginning on or after 6th April, 1948; and
  - (c) as respects profits tax in respect of the following profits:
    - (i) profits arising in any chargeable accounting period beginning on or after 1st April, 1949;
    - (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
    - (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after 6th April, 1949.

## ARTICLE XXV

1. (1) The present Convention shall continue in effect indefinitely but either of the High Contracting Parties may, on or before 30th June in any calendar year not earlier than the year 1953, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective.
- (2) The present Convention shall cease to be effective, in Sweden,
- (a) as respects tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given;
  - (b) as respects coupon tax payable on or after 1st January in the calendar year next following that in which the notice is given; and
  - (c) as respects capital tax assessed in or after the second calendar year following that in which the notice is given;
- (3) The present Convention shall cease to be effective, in the United Kingdom,
- (a) as respects income 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;
  - (b) as respects surtax for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given;
  - (c) as respects profits tax in respect of the following profits:

- (i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

## SCHEDULE 2 TO THE ORDER

*(Section 2)*

### Application.

1. (1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—

- (a) as if the contracting parties were the Government of Saint Christopher and Nevis and the Government of Sweden, and as if the tax concerned in the case of Saint Christopher and Nevis were the tax on income imposed by the Income Tax Act, as amended;
- (b) as if references to the date of signature were references to the 18th day of December, 1953.

(2) The extension shall have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning in the calendar year next following the date of this Order and for subsequent years of assessment, and will have effect in Sweden—

- (a) as respects Swedish tax on income for which preliminary tax is payable after the last day of February in the calendar year next following the date of this Order;
- (b) as respects Swedish coupon tax payable on or after the 1st January in the calendar year next following the date of this Order;
- (c) as respects Swedish capital tax assessed on or after the second calendar year next following the date of this Order.

(3) The extension shall continue in effect indefinitely but may be terminated as respects Saint Christopher and Nevis by written notice of termination given on or before the 30th June in any calendar year by either of the High Contracting Parties to the Convention to the other High Contracting Party, through diplomatic channels, and in such event the extension shall cease to have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, and will cease to have effect in Sweden as respects Swedish tax on income for which preliminary tax is payable after the last day of February in the calendar year next following that in which the notice is given, as respects Swedish coupon tax payable on or after 1st January in the calendar year next following that in which the notice is given, and as respects Swedish capital tax assessed in or after the second calendar year next following that in which the notice is given.

**Modifications**

2. (1) In paragraph 1 of Article VII of the Convention the words “exempt from the United Kingdom surtax” shall be understood, for the purposes of this extension, as though they read “shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company”.

(2) Article VIII shall be deemed to be deleted.

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**NINTH SCHEDULE**

*(Section 90)*

**INCOME TAX (DOUBLE TAXATION RELIEF) (UNITED KINGDOM)  
ORDER****Short title.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (United Kingdom) Order.

**Declaration.**

2. It is hereby declared—

(a) that the arrangements specified in the Arrangement set out in the Schedule to this Order have been made with the Government of the United Kingdom with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of the United Kingdom;

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

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**SCHEDULE**

Arrangements between His Majesty’s Government and the Government of Saint Christopher and Nevis for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

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

(a) in the United Kingdom, the income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”).

(b) in Saint Christopher and Nevis, the income tax (hereinafter referred to as “Saint Christopher and Nevis tax”).

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Saint Christopher and Nevis after this Arrangement has come into force.

2. In this Arrangement, unless the context otherwise requires,



- (a) the term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
- (b) the terms “one of the territories and “the other territory” mean the United Kingdom or Saint Christopher and Nevis, as the context requires;
- (c) the term “tax” means United Kingdom tax or Saint Christopher and Nevis tax, as the context requires;
- (d) the term “person” includes any body of persons, corporate or not corporate;
- (e) the term “company” means any body corporate;
- (f) the terms “resident of the United Kingdom” and “resident of Saint Christopher and Nevis” mean, respectively, any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax, and any person who is resident in Saint Christopher and Nevis for the purposes of Saint Christopher and Nevis tax and not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Saint Christopher and Nevis if its business is managed and controlled in Saint Christopher and Nevis;
- (g) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of Saint Christopher and Nevis, as the context requires;
- (h) the terms “United Kingdom enterprise” and “Saint Christopher and Nevis enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Saint Christopher and Nevis, and the terms “enterprise of one of the territories and “enterprise of the other territory” mean a United Kingdom enterprise or a Saint Christopher and Nevis enterprise, as the context requires;
- (i) the term “industrial or commercial profits” includes rents or royalties in respect of cinematograph films;
- (j) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf.

(2) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his or her business as such.

(3) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

(4) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(5) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and 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, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.

(6) In the application of the provisions of this Arrangement by the United Kingdom or Saint Christopher and Nevis, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, Saint Christopher and Nevis relating to the taxes which are the subject of this Arrangement.

**3.** (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Saint Christopher and Nevis tax unless the enterprise is engaged in trade or business in Saint Christopher and Nevis through a permanent establishment situated therein, and if it is so engaged, tax may be imposed on those profits by Saint Christopher and Nevis, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Saint Christopher and Nevis enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein, and if it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive from its activities in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

**4.** Where

- (a) an enterprise of one of the territories 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 one of the territories and an enterprise of the other territory; and
- (c) 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.

**5.** Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

**6.** (1) Dividends paid by a company in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

**7.** (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory, but no exemption shall be allowed under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph, the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

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

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

**9.** (1) An individual who is a resident of the United Kingdom shall be exempt from Saint Christopher and Nevis tax on profits or remuneration in respect of personal (including professional) services performed within Saint Christopher and Nevis in any year of assessment if

- (a) he or she is present within Saint Christopher and Nevis for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in the United Kingdom; and
- (c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of Saint Christopher and Nevis shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if

- (a) he or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) the services are performed for or on behalf of a person resident in Saint Christopher and Nevis; and
- (c) the profits or remuneration are subject to Saint Christopher and Nevis tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

**10.** (1) Any pension (other than pension paid by the Government of Saint Christopher and Nevis for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Saint Christopher and Nevis by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Saint Christopher and Nevis tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Saint Christopher and Nevis and subject to Saint Christopher and Nevis tax in respect thereof, shall be exempt from United Kingdom tax.

(3) 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 consideration of money paid.

**11.** The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory shall be exempt from tax in that other territory.

**12.** A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

**13.** (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, Saint Christopher and Nevis tax payable, whether directly or by deduction, in respect of income from sources within Saint Christopher and Nevis shall be allowed as a credit against any United Kingdom tax payable in respect of that income.

(2) Subject to the provisions of the law of Saint Christopher and Nevis regarding the allowance as a credit against Saint Christopher and Nevis tax of tax payable in a territory outside Saint Christopher and Nevis, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against any Saint Christopher and Nevis tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in the United Kingdom, the credit shall take into account (in addition to any United Kingdom income tax appropriate to the dividend)

the United Kingdom profits tax payable by the company in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at a fixed rate to which the shares are entitled and an additional participation in profits, the profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(3) For the purposes of this paragraph, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

(4) Where Saint Christopher and Nevis income tax is payable for a year for which this Arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April, 1947, then,

- (a) in the case of a person resident in Saint Christopher and Nevis, the Saint Christopher and Nevis income tax shall, for the purposes of subparagraph (2) of this paragraph, be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of section 27 of the United Kingdom Finance Act, 1920; and
- (b) in the case of a person resident in the United Kingdom, the provisions of section 87 of the Saint Christopher and Nevis, Income Tax Act shall apply for the purposes of the allowance of relief from Saint Christopher and Nevis tax.

**14.** (1) The taxation authorities of the United Kingdom and Saint Christopher and Nevis shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Arrangement.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons concerned with the assessment and collection of the taxes which are the subject of this Arrangement, and no information shall be exchanged which would disclose any trade secret or trade process.

(3) As used in this paragraph, the term "taxation authorities" means the Commissioners of Inland Revenue or their authorised representative, in the case of the United Kingdom, and the Comptroller of Inland Revenue or his or her authorised representative, in the case of Saint Christopher and Nevis.

**15.** This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Saint Christopher and Nevis as are necessary to give this Arrangement the force of law in the United Kingdom and Saint Christopher and Nevis, respectively, and shall thereupon have effect,

- (a) in the United Kingdom,
  - (i) as respects income tax for the year of assessment beginning on the 6th day of April, 1947, and subsequent years; and
  - (ii) as respects profits tax for any chargeable accounting period beginning on or after the 1st day of January, 1947, and for the unexpired portion of any chargeable accounting period current at that date;

- (b) in Saint Christopher and Nevis, as respects income tax for the year of assessment beginning on the first day of January, 1947, and subsequent years.

16. This Arrangement shall continue in effect indefinitely, but either of the Governments may, on or before the 30th June in any calendar year after 1948, give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective,

- (a) in the United Kingdom,
  - (i) as respects income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given;
  - (ii) as respects surtax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given; and
  - (iii) as respects profits tax for any chargeable accounting period beginning on or after the first day of January in the calendar year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date;
- (b) in Saint Christopher and Nevis, as respects income tax for the year of assessment beginning on or after the first day of January in the calendar year next following that in which such notice is given.

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## TENTH SCHEDULE

*(Section 90)*

### INCOME TAX (DOUBLE TAXATION RELIEF) (SWITZERLAND) ORDER

#### Short title.

1. This Order may be cited as the Income Tax (Double Taxation Relief) (Switzerland) Order.

#### Declaration.

2. It is hereby declared—

- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of Switzerland;
  - (b) that it is expedient that those arrangements shall have effect.
-

**SCHEDULE 1 TO THE ORDER***(Section 2)*

Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Swiss Confederation for the avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income.

**ARTICLE I**

1. The taxes which are the subject of the present Convention are:

- (a) in the United Kingdom, the income tax (including surtax), the profits tax and the excess profits levy (hereinafter referred to as “United Kingdom tax”);
- (b) in Switzerland, the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, etc.), but not including the Federal coupon tax except where expressly mentioned (hereinafter referred to as “Swiss tax”).

2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Switzerland subsequently to the date of signature of the present Convention.

**ARTICLE II**

1. In the present Convention, unless the context otherwise requires,

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
- (b) the term “Switzerland” means the Swiss Confederation;
- (c) the terms “one of the territories” and “the other territory” mean the United Kingdom or Switzerland, as the context requires;
- (d) the term “tax” means United Kingdom tax or Swiss tax, as the context requires;
- (e) the term “company” means, in relation to the United Kingdom, any body corporate, and, in relation to Switzerland, any entity with juridical personality;
- (f) the term “person” includes any individual, company, unincorporated body of persons, and any other entity with or without juridical personality;
- (g) the term “resident” of the United Kingdom” means:
  - (i) any company or partnership whose business is managed and controlled in the United Kingdom;
  - (ii) any other person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax;
- (h) the term “resident of Switzerland” means:
  - (i) any company or partnership (“societe simple, “societe en nom collectif” or “societe en commandite”) created or organised under

- Swiss law, if its business is not managed and controlled in the United Kingdom;
- (ii) any other person who is resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax and not resident in the United Kingdom for the purposes of United Kingdom tax;
- (i) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a resident of Switzerland, as the context requires;
  - (j) the terms “United Kingdom enterprise” and “Swiss enterprise” mean, respectively, an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Switzerland, and the terms “enterprise of one of the territories and “enterprise of the other territory” mean a United Kingdom enterprise or a Swiss enterprise, as the context requires;
  - (k) the term “permanent establishment” means a branch, management, office, factory, workshop or other fixed place of business, and a farm, mine, quarry or other place of natural resources subject to exploitation, and it also includes a place where building construction is carried on by contract for a period of at least one year, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of an enterprise of one of the territories, and in this connection,
    - (i) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a bona fide broker, general commission agent or other independent agent acting in the ordinary course of his or her business as such;
    - (ii) the fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;
    - (iii) the fact that an enterprise of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company;
  - (l) the term “industrial or commercial profits” includes manufacturing, mercantile, mining, farming, financial and insurance profits, and rents and royalties in respect of cinematograph films, but does not include income in one form of dividends, interests or royalties (other than cinematograph royalties) except any such income which, under the laws of one of the territories and in accordance with Article III of the present Convention, is attributable to a permanent establishment situated therein;
  - (m) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised



representative; in the case of Switzerland, the Director of the Federal Tax Administration or his or her authorised representative; and in the case of any territory to which the present Convention is extended under Article XXI, the competent authority for the administration in such territory of the taxes to which the Convention applies.

2. Where the present Convention provides that income from a source within Switzerland shall be exempt from or entitled to a reduced rate of tax in Switzerland if (with or without other conditions) it is subject to tax in the United Kingdom, and under the law in force in the United Kingdom the said income is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the exemption or reduction in rate to be allowed under the Convention in Switzerland shall apply only to so much of the income as is remitted in the United Kingdom.
3. Where under any provision of the present Convention a partnership is entitled to exemption from United Kingdom tax as a resident of Switzerland on any income, such a provision shall not be construed as restricting the right of the United Kingdom to charge any member of the partnership, being a person who is resident in the United Kingdom for the purposes of United Kingdom tax (whether or not he or she is also resident in Switzerland for the purposes of Swiss tax) to tax on his or her share of the income of the partnership; but any such income shall be deemed, for the purposes of Article XV, to be income from sources within Switzerland.
4. Where under any provision of the present Convention an estate of a deceased person is entitled to exemption from United Kingdom tax as a resident of Switzerland on any income, such a provision shall not be construed as requiring the United Kingdom to grant exemption from United Kingdom tax in respect of such part of such income as goes to any heir of such estate who is not resident in Switzerland for the purposes of Swiss tax and whose share of such income is not subject to Swiss tax either in his or her hands or in the hands of the estate.
5. In the application of the provisions of the present Convention by either Contracting Party any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the Convention.

### ARTICLE III

1. The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Swiss tax unless the enterprise is engaged in trade or business in Switzerland through a permanent establishment situated therein, and if it is so engaged, tax may be imposed on those profits by Switzerland, but only on so much of them as is attributable to that permanent establishment.
2. The industrial or commercial profits of a Swiss enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein, and if it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.
3. Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him or her to the enterprise for acceptance.

5. No portion of any profits arising to an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of goods or merchandise within that other territory by the enterprise.

6. In the determination of the industrial or commercial profits of a permanent establishment there shall be allowed as deductions all expenses which are reasonably applicable to the permanent establishment including executive and general administrative expenses so applicable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

#### ARTICLE IV

Where

- (a) an enterprise of one of the territories 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 one of the territories and an enterprise of the other territory;

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

#### ARTICLE V

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships or aircraft, including profits of that resident from the sale of tickets for passages by such ships or aircraft, shall be exempt from tax in the other territory.

#### ARTICLE VI

1. Dividends (other than dividends which, under the laws of the United Kingdom and in accordance with Article III of this Convention, are attributable to a permanent establishment situated in the United Kingdom) paid by a company which is a resident of the United Kingdom to a resident of Switzerland who is subject to Swiss tax in respect thereof shall be exempt from United Kingdom tax.

2. The industrial and commercial profits of a Swiss enterprise engaged in a trade or business through a permanent establishment in the United Kingdom shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom profits tax only at that lower rate.

3. Where not less than 50% of the entire voting power of a company which is a resident of the United Kingdom is controlled, directly or indirectly, by a company which is a resident of Switzerland, the distributions by the former company to the latter company, and to any other company which is a resident of Switzerland and which beneficially owns not less than 10% of the entire share capital of the company paying the dividends, shall be left out of account in computing United Kingdom profits tax effectively chargeable on that company at the rate appropriate to distributed profits.

4. The Swiss anticipatory tax may be charged in respect of dividends paid by any company created under Swiss law to a resident of the United Kingdom, but, in the case of any such resident who is subject to United Kingdom tax in respect thereof, the rate of anticipatory tax shall be reduced in accordance with the following provisions of this paragraph (unless the dividends are, under the laws of Switzerland and in accordance with Article III of this Convention, attributable to a permanent establishment situated in Switzerland):

- (a) if that resident is an individual whose effective rate of United Kingdom tax does not exceed 5%, the anticipatory tax shall not be charged;
- (b) if that resident is an individual whose effective rate of United Kingdom tax exceeds 5%, the anticipatory tax shall be charged only at the rate which, when added to the rate of Federal coupon tax, equals that effective rate;
- (c) if that resident is a company which controls, directly or indirectly, not less than 95% of the entire voting power of the company paying the dividends, the anticipatory tax shall be reduced by an amount equal to 20% of the dividend;
- (d) if that resident is a company which controls, directly or indirectly, less than 95% but not less than 50% of the entire voting power of the company paying the dividends, the anticipatory tax shall be reduced by an amount equal to 10% of the dividend;
- (e) if that resident is a company which beneficially owns not less than 10% entire share capital of the company paying the dividends, and the provisions of either sub-paragraph (c) or sub-paragraph (d) of this paragraph apply to some part of the dividends paid by the latter company, the anticipatory tax shall be reduced by an amount equal to 10% of the dividend.

5. If at any time distributed profits of companies become chargeable to United Kingdom profits tax at a rate other than 20% above the rate at which undistributed profits are effectively chargeable to that tax, the competent authorities of the two Contracting Parties may consult together in order to determine whether it is necessary for this reason to amend sub-paragraphs (c), (d) and (e) of the preceding paragraph; and after such consultation has taken place either of the Contracting Parties may give to the other Contracting Party, through diplomatic channels, written notice of termination of the provisions of paragraph 3 and of sub-paragraphs (c), (d) and (e) of paragraph 4 of this Article, and, in such event those provisions shall cease to be effective from the date on which the relevant change in the rates of the United Kingdom profits tax took effect.

6. Subject to the provisions of paragraph 4 of this Article, where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form

of taxation on dividends paid by the company to persons not resident in that territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

#### ARTICLE VII

1. Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof, shall be exempt from tax in that first territory.
2. In this Article,
  - (a) the term “interest” means interest on bonds, securities, notes debentures or on any other form of indebtedness (including mortgages or bonds secured on real property);
  - (b) the term “royalty” means any royalty or other amount paid as consideration for the right to use any copyright, artistic or scientific work patent, model, design, secret process or formula, trade mark or other like property or right (including rentals and like payments for the use of industrial or commercial machinery or plant or scientific apparatus), but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.
3. Any capital sum derived from sources within one of the territories from the sale of property or rights mentioned in sub-paragraph (b) of paragraph 2 of this Article by a resident of the other territory, shall be exempt from tax in the first territory.
4. Where there is a special relationship between debtor and creditor or both debtor and creditor have a special relationship with a third person or persons, and in consequence the amount paid is greater than would have been agreed upon if debtor and creditor had been at arm’s length, the exemption provided by this Article shall not apply to the excess.
5. Any interest or royalty exempted from United Kingdom tax by this Article shall be allowed as a deduction for profits tax and excess profits levy purposes from the profits or income of the person paying the interest or royalty, whatever the relationship between that person and the person receiving the interest or royalty may be.
6. The exemptions from tax in one of the territories provided for in this Article shall not apply to interest royalties or capital sums which, under the laws of that territory and in accordance with Article III of this Convention, are attributable to a permanent establishment situated therein.

#### ARTICLE VIII

1. A resident of one of the territories shall be exempt in the other territory from any tax on gains from the sale, transfer or exchange of capital assets (other than gains, which under the laws of that other territory and in accordance with Article III of this Convention, are attributable to a permanent establishment situated therein).
2. In this Article, the term “capital assets” means any movable property, whether corporeal or incorporeal.

## ARTICLE IX

1. Income derived from real property situated in one of the territories by a resident of the other territory shall be subject to tax in accordance with the laws of the first-mentioned territory; and where the income is also subject to tax in the other territory, relief from double taxation shall be given in accordance with the provisions of Article XV.
2. In this Article, the term “income from real property” means income of whatever nature derived from real property, including gains derived from the sale or exchange of such property, and it also includes royalties in respect of the operation of mines, quarries or other natural resources. It does not however include interest from mortgages on bonds secured on such property.

## ARTICLE X

1. Remuneration, including pensions, paid by, or out of funds created by, the government of the United Kingdom to an individual in respect of services rendered to that government in the discharge of governmental functions shall be exempt from Swiss tax:

Provided that the exemption shall not apply to remuneration, other than a pension, paid to a Swiss citizen who is not also a British subject.

2. Remuneration, including pensions, paid by, or out of funds created by, the Swiss Confederation or by any Swiss canton to an individual in respect of services rendered to Switzerland in the discharge of governmental functions shall be exempt from United Kingdom tax:

Provided that the exemption shall not apply to remuneration, other than a pension, paid to a British subject who is not also a Swiss citizen.

3. The provisions of paragraphs 1 and 2 of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Contracting Party or by any Swiss canton for purposes of profit.
4. The provisions of this Convention shall not be construed as denying or affecting in any manner the right of diplomatic and consular officers to other or additional exemptions now enjoyed or which may hereafter be granted to them.

## ARTICLE XI

1. An individual who is a resident of the United Kingdom shall be exempt from Swiss tax on profits or remuneration in respect of personal (including professional) services performed within Switzerland in any year of assessment if

- (a) he or she is present within Switzerland for a period or periods not exceeding in the aggregate 183 days during that year;
- (b) in the case of a directorship or employment, the services are performed for or on behalf of a resident of the United Kingdom, and, in other cases, he or she has no office or other fixed place of business in Switzerland; and
- (c) the profits or remuneration are subject to United Kingdom tax.

2. An individual who is a resident of Switzerland shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if

- (a) he or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year;
  - (b) in the case of a directorship or employment, the services are performed for or on behalf of a resident of Switzerland, and, in other cases, he or she has no office or other fixed place of business in Switzerland; and
  - (c) the profits or remuneration are subject to Swiss tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture, radio or television artists, musicians and athletes.

#### ARTICLE XII

1. Any pension (other than a person of the kind referred to in Article X) and any annuity, derived from sources within one of the territories by an individual who is a resident of the other territory and subject to tax in that other territory in respect thereof, shall be exempt from tax in the first territory.
2. In this Article,
  - (a) the term “pension” means periodic payments made in consideration of past services or by way of compensation for injuries received;
  - (b) 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 XIII

1. A professor or teacher from one of the territories who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.
2. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him or her by persons outside that other territory for the purposes of his or her maintenance, education or training.

#### ARTICLE XIV

1. Individuals who are residents of Switzerland shall be entitled to the same personal allowances, relief and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.
2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, relief and reductions for the purposes of Swiss tax as Swiss nationals resident in the United Kingdom.

#### ARTICLE XV

1. The laws of the Contracting Parties shall continue to govern the taxation of income arising in either territories, except where the express provision to the contrary is made in the present Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

2. 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, Swiss tax payable, whether directly or by deduction, in respect of income from sources within Switzerland shall be allowed as a credit against United Kingdom tax payable in respect of that income. Where such income is a dividend by a company which is a resident of Switzerland to a company which controls, directly or indirectly, not less than 50% of the entire voting power of the former company, the credit shall take into account (in addition to any Swiss tax appropriate to the dividend) the Swiss tax payable by the former company in respect of its profits, and for the purposes of this paragraph, the term "Swiss tax" shall include the federal coupon tax, but shall not include the communal taxes.
3. Income (other than dividends) from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with this Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Swedish tax.
4. In the case of a person (other than a company or partnership) who is resident in the United Kingdom for the purposes of United Kingdom tax and is also resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax, the provisions of paragraph 2 of this Article shall apply in relation to income which that person derives from sources within Switzerland, and the provisions of paragraph 3 of this Article shall apply in relation to income which that person derives from sources within the United Kingdom. If such person derives income from sources outside both the United Kingdom and Switzerland, tax may be imposed on that income in both territories (subject to the laws in force in the territories and to any Convention which may exist between either of the Contracting Parties and the territory from which the income is derived) but the Swiss tax on so much of that income as is subjected to tax in both territories shall be limited to one-half of the tax on such income, and the United Kingdom tax shall be reduced by a credit, in accordance with paragraph 2 of this Article for the Swiss tax so computed.
5. For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, except that the remuneration of director of a company shall be deemed to be income from sources within the territory in which the company is resident, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

#### ARTICLE XVI

1. Where it is provided in this Convention that relief from tax in respect of any kind of income shall be allowed in the territory from which such income is derived, that provision shall not be construed as requiring that income to be paid without deduction of tax at source at the full rate. Where tax has been deducted at source from such income the taxation authorities of the territory in which relief from tax is required to be given shall, when the taxpayer in receipt of the income shows to their satisfaction and within the time limits prescribed in that territory that he or she is entitled to the relief, arrange for the appropriate repayment of the tax.
2. Where any income is exempted from tax by any provision of this Convention, it may nevertheless be taken into account in computing the tax on other income or in determining the rate of such tax.
3. For the purpose of calculating the relief due under Articles VI and XIV, the income of a partnership shall be regarded as that of its individual members.

## ARTICLE XVII

1. The provisions of the present Convention shall not be construed as restricting in any manner any exemption, deduction, credit or other allowance now or hereafter accorded by the laws in force in the territory of one of the Contracting Parties in the determination of the tax imposed in such territory.
2. The provisions of the present Convention shall not be construed as derogating from any right or privilege conferred upon taxpayers by the Agreement of the 17th October, 1931, between the Government of the United Kingdom and the Swiss Federal Council for reciprocal exemption from taxation on profits or gains arising through an agency.

## ARTICLE XVIII

1. The nationals of one Contracting Party shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected in similar circumstances.
2. The enterprises of one of the territories, whether carried on by a company, a body of persons or individuals alone or in partnership, shall not be subjected in the other territory, in respect of income, profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like income, profits and capital.
3. The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first territory to any taxation which is other, higher, or more burdensome than the taxation to which other like enterprises of that first territory are or may be subjected in similar circumstances in respect of the like income, profits and capital.
4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one Contracting Party to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, relief and reductions for tax purposes as are granted to its own nationals.
5. In this Article, the term “nationals” means,
  - (a) in relation to Switzerland, all Swiss citizens wherever residing and all entities with or without juridical personality created under Swiss laws;
  - (b) in relation to the United Kingdom, all British subjects and British-protected persons,
    - (i) residing in the United Kingdom or any territory to which the present Convention applies by reason of extension made under Article XXI, or
    - (ii) deriving their status as such from connection with the United Kingdom or any territory to which the present Convention is extended under Article XXI, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the United Kingdom or territory to which the present Convention is extended under Article XXI.



6. In this Article, the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

#### ARTICLE XIX

1. Where taxpayer shows to the satisfaction of the competent authority of the Contracting Party of which is a national or in whose territory he or she is resident that he or she has not received the treatment in the other territory to which he or she is entitled under any provision of this Convention, that competent authority shall consult with the competent authority of the other party with a view to the avoidance of double taxation in question.

2. The competent authority of the two Contracting parties may communicate with each other directly for the purpose of giving effect to the provisions of this Convention (and, in particular, the provisions of Articles III and IV) and for resolving any difficulty or doubt as to the application or interpretation of the Convention.

#### ARTICLE XX

1. The competent authorities of the Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention in relation to the taxes which are subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting Parties the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting Party or which would be contrary to its sovereignty, security or public policy or to supply particulars which are not procurable under its own legislation or that of a Party making application.

#### ARTICLE XXI

1. The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

2. The termination in respect of the United Kingdom or Switzerland of the present Convention under Article XXIV shall, unless otherwise expressly agreed by the Contracting Parties, terminate the application of the Convention to any territory to which the Convention has been extended under this Article.

#### ARTICLE XXII

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

2. The present Convention shall enter into force upon the exchange of instruments of ratification.

## ARTICLE XXIII

1. Upon the entry into force of the present Convention in accordance with Article XXII, the provisions of this Convention shall have effect, in Switzerland, for any taxable year beginning on or after 1st January, 1953, and in the United Kingdom,

- (a) as respects income tax (including surtax) for any year of assessment beginning on or after 6th April, 1953;
- (b) as respects profits tax and excess profits levy in respect of the following profits:
  - (i) profits by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after 6th April, 1953;
  - (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the 1st April, 1953 or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date.

2. The exemption from tax provided in Article V shall have effect for any year of assessment beginning on or after the 6th April, 1946.

## ARTICLE XXV

The present Convention shall continue in effect indefinitely but either Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1957, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective, in Switzerland, for any taxable year beginning on or after the 1st January of the Calendar year next following that in which the notice is given, and in the United Kingdom,

- (a) as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;
- (b) as respects profits tax in respect of the following profits:
  - (i) profits by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;
  - (ii) other profits being profits by reference to which income tax is not attributable, but which arise in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date.

**SCHEDULE 2 TO THE ORDER***(Section 2)***Application.**

1. (1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—

- (a) as if the Contracting Parties were the Government of Saint Christopher and Nevis and the Government of Switzerland, and as if the tax concerned in the case of Saint Christopher and Nevis were the tax on income imposed by the Income Tax Act;
- (b) as if references to the date of signature of the present Convention were references to the 26th day of August, 1963;
- (b) as if references to the 6th day of April were references to the 1st day of January.

(2) The extension shall have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning 1st January, 1961, and for subsequent years of assessment, and will have effect in Switzerland as respects Swiss tax for the taxable years beginning on or after the 1st day of January, 1961.

(3) The present extension shall continue in effect indefinitely but may be terminated as respects Saint Christopher and Nevis by written notice of termination given on or before the 30th day of June in any calendar year not earlier than the year 1966 by either of the Contracting Parties to the Convention to the other Contracting Party, through diplomatic channels, and in such event the extension shall cease to have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning on the 1st day of January in the calendar year next following the date of such notice and for subsequent years of assessment, and will cease to have effect in Switzerland as respects Swiss tax for the taxable year beginning on or after the 1st day of January in the calendar year next following that in which the notice is given.

**Modifications.**

2. For the purposes of the extension of the Convention—

- (a) Article VI shall be deemed to deleted;
- (b) references to interest in Article VII shall be deemed to be deleted;
- (c) the words “other than dividends and interest” shall be deemed to be substituted for the words “other than dividends” appearing in brackets in paragraph 3 of Article XV.

**ELEVENTH SCHEDULE***(Section 90)***INCOME TAX (DOUBLE TAXATION RELIEF) (USA) ORDER****Short title.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (USA) Order.

**Declaration.**

2. It is hereby declared—
- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of the United States of America;
  - (b) that it is expedient that those arrangements shall have effect.

**SCHEDULE 1 TO THE ORDER**

(Section 2)

**PART I****CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT  
BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES  
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL  
EVASION WITH RESPECT TO TAXES ON INCOME.****ARTICLE I**

1. The taxes which are the subject of the present Convention are:
- (a) in the United States of America, the Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as “the United States tax”);
  - (b) in the United Kingdom of Great Britain and Northern Ireland, the income tax (including surtax), excess profits tax and the national defence contribution (hereinafter referred to as “United Kingdom tax”).
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention or by the Government of any territory to which the present Convention is extended under Article XXII.

**ARTICLE II**

1. (1) In the present Convention, unless the context otherwise requires,
- (a) the term “United States” means the United States of America, and when used in a geographical sense, means the States, the Territories of Alaska and of Hawaii, and the District of Columbia;
  - (b) the term “United Kingdom” means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
  - (c) the terms “territory of one of the Contracting Parties” and “territory of the other Contracting Party” mean the United States or the United Kingdom, as the context requires;
  - (d) the term “United States corporation” means a corporation, association or other like entity created or organised in or under the laws of the United States;

- (e) the term “United Kingdom Corporation” means any kind of juridical person created under the laws of the United Kingdom;
- (f) the terms “corporation of one Contracting Party” and “corporation of the other Contracting Party” mean a United States corporation or a United Kingdom corporation, as the context requires;
- (g) the term “resident” of the United Kingdom” means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax; and a corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom;
- (h) the term “resident of the United States” means any individual who is a resident of the United States for the purposes of the United States tax and not resident in the United Kingdom for the purposes of the United Kingdom tax, and any United States corporation and any partnership created or organised in or under the laws of the United States, being a corporation or partnership which is not resident in the United Kingdom for the purposes of United Kingdom tax;
- (i) the term “United Kingdom enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom;
- (j) the term “United States enterprise” means an industrial or commercial enterprise or undertaking carried on by a resident of the United States;
- (k) the terms “enterprise of one of the Contracting Parties” and “enterprise of the other Contracting Party” mean a United States enterprise or a United Kingdom enterprise, as the context requires;
- (l) the term “permanent establishment”, when used with respect to an enterprise of one of the Contracting Parties, means a branch, management, factory or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he or she regularly fills orders on its behalf.

(2) An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a bona fide commission agent, broker or custodian acting in the ordinary course of his or her business as such.

(3) The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of the enterprise.

(4) The fact that a corporation of one of the Contracting Parties has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

2. For the purposes of Articles VI, VII, VIII, IX and XIV, a resident of the United Kingdom shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year; and the same principle shall be applied, *mutatis mutandis*, by the United Kingdom in the case of a resident of the United States.

3. In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Party relating to the taxes which are the subject of the present Convention.

### ARTICLE III

1. A United Kingdom enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in a trade or business in the United States through a permanent establishment situated therein, and if it is so engaged, United States tax may be imposed upon the entire income of such enterprise from sources within the United States.

2. A United States enterprise shall not be subject to United Kingdom tax in respect of its industrial or commercial profits unless it is engaged in a trade or business in the United Kingdom through a permanent establishment situated therein, and if it is so engaged, United Kingdom tax may be imposed upon the entire income of such enterprise from sources within the United Kingdom:

Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of United Kingdom excess profits tax and national defence contribution in the case of inter-connected companies.

3. Where an enterprise of one of the Contracting Parties is engaged in trade or business in the territory of the other Contracting Party through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment, and the profits so attributed shall, subject to the law of such other Contracting Party, be deemed to be income from sources within the territory of such other Contracting Party.

4. In determining the industrial or commercial profits from sources within the territory of one of the Contracting Parties of an enterprise of the other Contracting Party, no profits shall be deemed to arise from the mere purchase of goods or merchandise within that other territory by such enterprise.

### ARTICLE IV

Where an enterprise of one of the Contracting Parties, by reason of its participation in the management, control or capital of an enterprise of the other Contracting Party, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

### ARTICLE V

1. Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual (other than a citizen of the United States)

resident in the United Kingdom or a United Kingdom corporation derives from operating ships documented or aircraft registered under the laws of the United Kingdom, shall be exempt from United States tax.

2. Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in the United Kingdom or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States, shall be exempt from United Kingdom tax.

3. This Article shall be deemed to have superseded, on and after the first day of January, 1945, as to United States tax, and on and after the 6th day of April, 1945, as to United Kingdom tax, the arrangements relating to reciprocal exemption of shipping profits from income effected between the Government of the United States and the Government of the United Kingdom by Exchange of Notes dated August 11, 1924, November 18, 1924, November 26, 1924, January 15, 1925, February 13, 1925, and March 16, 1925, which shall accordingly cease to have effect.

#### ARTICLE VI

1. The rate of the United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15%:

Provided that such rate of tax shall not exceed 5% if such resident is a corporation controlling, directly or indirectly, at least 95% of the entire voting power in the corporation paying the dividend, and not more than 25% of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations, and such reduction of the rate to 5% shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

2. Dividends derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

3. Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any year after 1945, and in such event paragraph 1 hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph 2 hereof shall cease to be effective as to United Kingdom tax on and after the 6th day of April, in the year next following that in which such notice is given.

#### ARTICLE VII

1. Interest (on bonds, securities, notes, debentures, or any other form of indebtedness) derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in the United Kingdom controlling, directly or indirectly, more than 50% of the entire voting power in the paying corporation.

2. Interest (on bonds, securities, notes, debentures, or any other form of indebtedness) derived from sources within the United Kingdom by a resident of the

United States who is subject to United States tax on such interest and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax; but such exemption shall not apply to such interest paid by a corporation resident in the United Kingdom to a United States corporation controlling, directly or indirectly, more than 50% of the entire voting power in the paying corporation.

#### ARTICLE VIII

1. Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes or formulae, trademarks, and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.
2. Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes or formulae, trademarks, and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax.
3. For the purposes of this Article, the term “royalties” shall be deemed to include rentals in respect of motion picture films.

#### ARTICLE IX

1. The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extractions of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15%:

Provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

2. Royalties in respect of the operation of mines or quarries or of other extractions of natural resources, and rentals from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

#### ARTICLE X

1. Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a British subject who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from United Kingdom tax.
2. Any salary, wage, similar remuneration, or pension, paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of governmental functions, shall be exempt from United States tax.



3. The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Parties for purposes of profit.

#### ARTICLE XI

1. An individual who is a resident of the United Kingdom shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (a) he or she is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (b) such services are performed for or on behalf of a person resident in the United Kingdom.

2. An individual who is a resident of the United States shall be exempt from United Kingdom tax upon profits, emoluments or other remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if (a) he or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and (b) such services are performed for or on behalf of a person resident in the United States.

3. The provisions of this Article shall not apply to the compensation, profits, emoluments or other remuneration of public entertainers such as stage, motion picture or radio artistes, musicians and athletes.

#### ARTICLE XII

1. Any pension (other than a pension to which Article X applies) and any life annuity, derived from sources within the United States by an individual who is a resident of the United Kingdom, shall be exempt from United States tax.

2. Any pension (other than a pension to which Article X applies) and any life annuity, derived from sources within the United Kingdom by an individual who is a resident of the United States, shall be exempt from United Kingdom tax.

3. The term "life 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 consideration of money paid.

#### ARTICLE XIII

1. Subject to section 131 of the United States Internal Revenue Code as in effect on the first day of January, 1945, United Kingdom tax shall be allowed as a credit against United States tax, and for this purpose, the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom income tax appropriate to such dividend if such recipient elects to include in his or her gross income for the purposes of United States tax the amount of such United Kingdom income tax.

2. Subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the United Kingdom, United States tax payable in respect of income from within the United States shall be allowed as a credit against United Kingdom tax in respect of that income. Where such an income is an ordinary dividend paid by a United States corporation, such credit shall take into account (in addition to any United States income tax deducted from or imposed on such dividend) the United States income tax imposed on such corporation in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an

additional participation in profits, such tax on profits shall likewise be taken into account in so far as the dividend exceeds such fixed rate.

3. For the purposes of this Article, compensation, profits, emoluments and other remuneration for personal (including professional) services shall be deemed to be income from sources within the territory of the Contracting Party where such services are performed.

#### ARTICLE XIV

A resident of the United Kingdom not engaged in trade or business in the United States shall be exempt from United States tax on gains from the sale or exchange of capital assets.

#### ARTICLE XV

Dividends and interest paid on or after the first day of January, 1945, by a United Kingdom corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident of the United States or a United States corporation.

#### ARTICLE XVI

A United Kingdom corporation shall be exempt from United States tax on its accumulated or undistributed earnings, profits, income or surplus, if individuals who are residents of the United Kingdom control, directly or indirectly, throughout the last half of the taxable year, more than 50% of the entire voting power in such corporation.

#### ARTICLE XVII

1. The United States income tax liability for any taxable year beginning prior to the 1st January, 1936, of any individual (other than a citizen of the United States) resident in the United Kingdom, or of any United Kingdom corporation, remaining unpaid on the date of signature of the present Convention, may be adjusted on a basis satisfactory to the United States Commissioner of Internal Revenue:

Provided that the amount to be paid in settlement for such liability shall not exceed the amount of the liability which would have been determined if

- (a) the United States Revenue Act of 1936 (except in the case of a United Kingdom corporation in which more than 50% of the entire voting power was controlled, directly or indirectly, throughout the latter half of the taxable year, by citizens or residents of the United States); and
- (b) Articles XV and XVI of the present Convention;

had been in effect for such year, and if the tax payer was not, within the meaning of such Revenue Act, engaged in trade or business in the United States and has no office or place of business therein during the taxable year, the amount of interest and penalties shall not exceed 50% of the amount of the tax with respect to which such interest and penalties have been computed.

2. The United States income tax unpaid on the date of signature of the present Convention for any taxable year beginning after the thirty – first day of December, 1935, and prior to the first day of January, 1945, in the case of an individual (other than a citizen of the United States) resident of the United Kingdom, or in the case of any United Kingdom corporation shall be determined as if the provisions of Articles XV and XVI of the present Convention had been in effect for such taxable year.

3. The provisions of paragraph 1 of this Article shall not apply
- (a) unless the tax payer files with the Commissioner of Internal Revenue on or before the thirty – first day of December, 1947, a request that such tax liability be so adjusted and furnishes such information as the Commissioner may require; or
  - (b) in any case in which the Commissioner is satisfied that any deficiency in tax is due to fraud with intent to evade tax.

#### ARTICLE XVIII

A professor or teacher from one of the Contracting Parties who visits the territory of the other Contracting Party for the purpose of teaching for a period not exceeding two years, at a university, college, school or other educational institution in the territory of such other Contracting Party shall be exempted by such other Contracting Party from tax on his or her remuneration for such teaching for such period.

#### ARTICLE XIX

A student or business apprentice from the territory of one of the Contracting Parties who is receiving full-time education or training in the territory of the other Contracting Party shall be exempted by such other Contracting Party from tax on payments made to him or her by persons within the territory of the former Contracting Party for the purposes of his or her maintenance, education or training.

#### ARTICLE XX

1. The taxation authorities of the Contracting Parties shall exchange such information (being information which is available under the respective laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term “taxation authorities” means, in the case of the United States, the Commissioner of Internal Revenue or his or her authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives; and, in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

#### ARTICLE XXI

1. The nationals of one of the Contracting Parties shall not, while resident in the territory of the other Contracting Party, be subjected therein to other or more burdensome taxes than are the nationals of such other Contracting Party resident in its territory.

2. The term “nationals” as used in this Article means,

- (a) in relation to the United Kingdom, all British subjects and British protected persons, from the United Kingdom or any territory with

respect to which the present Convention is applicable by reason of extension made by the United Kingdom under Article XXII;

- (b) in relation to the United States, United States citizens, and all persons under the protection of the United States, from the United States or any territory to which the present Convention is applicable by reason of extension made by the United States under Article XXII;

and includes all legal persons, partnerships and associations deriving their status as such from, or created or organised under, the laws in force in any territory of the Contracting Parties to which the present Convention applies.

3. In this Article, the word “taxation” means taxes of every kind and description, whether national, federal, state, provincial or municipal.

## ARTICLE XXII

1. Either of the Contracting Parties may, at the time of exchange of instruments of ratification or thereafter while the present Convention continues in force, by a written notification of extension given to the other Contracting Party, through diplomatic channels, declare its desire that the operation of the present Convention shall extend to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate, which impose taxes substantially similar in character to those which are the subject of the present Convention. The present Convention shall apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than sixty days from the date of notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of such notification, unless, prior to the date on which the convention would otherwise become applicable to a particular territory, the Contracting Party to whom notification is given shall have informed the other Contracting Party in writing through diplomatic channels that it does not accept such notification as to that territory. In absence of such extension, the present Convention shall not apply to any such territory.

2. At any time after the expiration of one year from the entry into force of an extension under paragraph 1 of this Article, either of the Contracting Parties may, by written notice of termination given to the other Contracting Party, through diplomatic channels, terminate the application of the Present Convention to any territory to which it has been extended under paragraph 1, and in such event the present Convention shall cease to apply, six months after the date of such notice, to the territory or territories named therein, but without affecting its continued application to the United States, the United Kingdom or to any other territory to which it has been extended under paragraph 1 hereof.

3. In the application of the present Convention in relation to any territory to which it is extended by notification by the United Kingdom or the United States, references to the “United Kingdom” or, as the case may be, the United States, shall be construed as references to that territory.

4. The termination in respect of the United States or the United Kingdom of the present Convention under Article XXIV or of Article VI shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention or, as the case may be, that Article to any territory to which the Convention has been extended by the United States or the United Kingdom.

5. The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

## ARTICLE XXIII

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.
2. Upon exchange of ratifications the present Convention shall have effect,
  - (a) as respects United States tax, for the taxable years beginning after the first day of January, 1945;
  - (b) as respects United Kingdom
    - (i) income tax, for the year of assessment beginning on the 6th day of April, 1945, and subsequent years;
    - (ii) surtax, for the year of assessment beginning on the 6th day of April, 1944, and subsequent years;
    - (iii) excess profits tax and national defence contribution, for any chargeable accounting period beginning on the 1st day of April, 1945, and for the unexpired portion of any chargeable period current at that date.

## ARTICLE XXIV

1. The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any year after the year 1946, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective,
  - (a) as respects United States tax, for the taxable years beginning on or after the first day of January in the year next following that in which such notice is given;
  - (b) as respects United Kingdom
    - (i) income tax, for any year of assessment beginning on or after the 6th day of April in the year next following that in which such notice is given;
    - (ii) surtax, for any year of assessment beginning on or after the 6th day of April in the year in which such notice is given;
    - (iii) excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April in the year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.
2. The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

## PART II

## PROTOCOL

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States,

Desiring to conclude a supplementary Protocol modifying in certain respects the Convention for the avoidance of double taxation and the prevention of fiscal evasion

with respect to taxes on income which was signed at Washington on April 16th , 1945,

Have agreed as follows:

#### ARTICLE I

Paragraph 3 of Article XI of the Convention of April 16th, 1945, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be deemed to be deleted and of no effect.

#### ARTICLE II

This Protocol, which shall be regarded as an integral part of the said Convention, shall be ratified and the instruments of ratification thereof shall be exchanged at Washington.

**Supplementary Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income, signed at Washington on April 16th, 1945, as modified by the Supplementary Protocol, signed at Washington on the 6th June, 1946.**

**The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States,**

**Desiring to conclude a further supplementary Protocol amending the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Washington on April 16th, 1945, as modified by the Supplementary Protocol, signed at Washington on the 6th June, 1946**

Have agreed as follows:

#### ARTICLE I

Paragraph 1 of Article XXII of the Convention of the 16th April, 1945, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income is hereby amended to read as follows:

“1. Either of the Contracting Parties may, at any time while the present Convention continues in force, by a written notification given to the other Contracting Party, through the diplomatic channels, declare its desire that the operation of the present Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, shall extend to all or any of its territories for whose international relations it is responsible, which impose taxes substantially similar in character to those which are the subject of the present Convention. When the other Contracting Party has, by a written communication, through the diplomatic channel, signified to the first Contracting Party that such notification is accepted in respect of such territory or territories, the present Convention, in whole or in part or with such modifications as may be found necessary for special application in a particular case, as specified in the notification, shall apply to the territory or territories named in the notification on and after the date or dates specified therein. None of the provisions of the present Convention shall apply to any such territory in absence of such acceptance in respect of that territory.”

## ARTICLE II

This Supplementary Protocol, which shall be regarded as an integral part of the said Convention, shall be ratified and the instruments of ratification thereof shall be exchanged in London.

Supplementary Protocol between the United Kingdom of Great Britain and Northern Ireland and the United States of America amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income, signed at Washington on April 16th, 1945, as modified by the Supplementary Protocol, signed at Washington on the 6th June, 1946 and by the Supplementary Protocol, signed at Washington on the 25th May, 1954.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States,

Desiring to conclude a further supplementary Protocol amending the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at Washington on 16th April, 1945, as modified by the Supplementary Protocol, signed at Washington on the 6th June, 1946 and by the Supplementary Protocol, signed at Washington on the 25th May, 1954,

Have agreed as follows:

## ARTICLE I

Paragraphs 1 and 2 of Article VIII of the Convention of the 16th April, 1945, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income is hereby amended to read as follows:

“1. Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes or formulae, trademarks, and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts shall be exempt from United States tax (a) if such resident is not engaged in trade or business in the United States through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through a permanent establishment.

2. Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes or formulae, trademarks, and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts shall be exempt from United Kingdom tax (a) if such resident is not engaged in trade or business in the United Kingdom through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through a permanent establishment.”

## ARTICLE II

Paragraph 1 of Article XIII of the said Convention is hereby amended to read as follows:

“1. Subject to sections 901 to 905 of the United States Internal Revenue Code as in effect on the 1st day of January, 1956, United Kingdom tax shall be allowed as a credit against United States tax, and for this purpose,

- (a) the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom tax appropriate to such dividend; and
- (b) the recipient of any royalty or other amount coming within the scope of Article VIII of the present Convention shall be deemed to have paid any United Kingdom tax legally deducted from the royalty or other amount by the person by or through whom any payment thereof is made;

if the recipient of the dividend, royalty or other amount, as the case may be, elects to include in his or her gross income for the purposes of United States tax the amount of such United Kingdom income tax.”

### ARTICLE III

1. This Supplementary Protocol shall be ratified and the instruments of ratification thereof shall be exchanged at London as soon as possible.
2. This Supplementary Protocol shall enter into force upon the exchange of instruments of ratification and shall thereupon have effect,
  - (a) in the United Kingdom,
    - (i) as respects income tax surtax for any year of assessment beginning on or after the 6th day of April, 1956;
    - (ii) as respects profits tax for any chargeable accounting period beginning on or after the 1st April, 1956, and for the unexpired portion of any chargeable accounting period current at that date;
  - (b) in the United States, as respects taxable years beginning on or after the 1st January, 1956.

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### SCHEDULE 2 TO THE ORDER

#### *(Section 2)*

#### **Application.**

1. (1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below—
  - (a) as if the contracting parties were the Government of Saint Christopher and Nevis and the Government of the United States, and as if the tax concerned in the case of Saint Christopher and Nevis were the tax on income imposed by the Income Tax Act, as amended;
  - (b) as if references to the date of signature were references to the 3rd day of December, 1958;
  - (c) as if references to the 6th day of April were references to the 1st day of January.
- (2) The extension shall have effect in Saint Christopher and Nevis as respects tax for the year of assessment next following that in which the last of those measures shall have been taken in the United States and Saint Christopher and Nevis and for subsequent years of assessment, and will have effect in the United States as respects



United States tax for the taxable year beginning on or after the 1st day of January in that next following calendar year.

**Modifications.**

2. (1) In paragraph 2 of Article VI the words “exempt from the United Kingdom surtax” shall be understood, for the purposes of this extension, as though they read “shall not be liable to any tax in the territory other than tax imposed with respect to profits or earnings of the corporation out of which such dividends are paid”.

(2) In paragraph 2 of Article IX the words “shall be exempt from United Kingdom surtax” shall be understood, for the purposes of this extension, as though they read “shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company”.

(3) Articles VII, XIV and XVI shall be deemed to be deleted.

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**TWELFTH SCHEDULE**  
**INCOME TAX RULES**

**Short title.**

1. These Rules may be cited as the Income Tax Rules.

**Interpretation.**

2. In these Rules, “Act” means the Income Tax Act, and other terms shall have the meanings defined in the Act.

**Form of Declaration of Secrecy.**

3. The declaration to be made by any person having an official duty under the Act shall be in the form set out in Schedule 1 to these Rules.

**Income Tax Return.**

4. (1) The return form shall require a declaration of the income arising in the basic year from each source of income specified in section 3 of the Act, and shall be in such form as may be approved from time to time by the Comptroller of Inland Revenue, and shall contain a general declaration to be made by the person completing the return that he or she has made “a full, true and correct return and given particulars of the whole of the income from every source assessable under the Act, to the best of his or her knowledge and belief”.

(2) The person shall also be required to declare in connection with any claims to personal allowances that the “particulars given are true and correct to the best of his or her knowledge and belief”.

**Date for delivering returns.**

5. The returns of income required to be delivered to the Comptroller of Inland Revenue under the provisions of section 45 of the Act shall be delivered—

(a) in the case of public officers and pensioners, not later than the 15th day of February of the year of assessment;

- (b) in the case of other employees, not later than the 15th day of March of the year of assessment;
- (c) in every other case, not later than the 15th day of April of the year of assessment:

Provided that the Comptroller may, at his or her discretion, extend the time for delivering the return to such date as he or she deems proper.

#### **Notices.**

6. (1) Every notice to be given to any person requiring him or her to comply with any section of the Act may be either written or printed and shall contain the following—

- (a) the word “notice” prominently at the top;
- (b) the number of the section under which it is given;
- (c) the particulars of the information required or of the action to be taken;
- (d) the date of issue;
- (e) the time allowed to comply with the notice.

(2) The time allowed for compliance with any notice shall be reasonable and shall not in any case be less than twenty-one days except that a notice to attend before the Comptroller shall not be less than seven days.

#### **Assessment List.**

7. The assessment list shall be in the form approved from time to time by the Comptroller of Inland Revenue, and shall contain the following particulars, in addition to those given in section 59 of the Act—

- (a) the assessment number;
- (b) the amount assessed from each source and the total assessable income;
- (c) the personal allowances.

#### **Notice of Assessment.**

8. The notice of assessment shall be in the form approved by the Comptroller of Inland Revenue, and it shall include the information shown on the assessment list and, in addition, shall specify when the tax charged becomes due.

#### **Payment of Tax.**

9. (1) Subject to the provisions of section 65 of the Act, in the case of appeals, tax, save as provided in sub-rule (2), shall be payable on 15th October or within one month after the date of issue of the notice of assessment, whichever is the later:

Provided that where the tax relates to an assessment made for a year of assessment anterior to the year in which it is made by the Comptroller the tax on such assessment shall be payable within one month after the date of service of notice of assessment.

(2) Subject to the provisions of section 65 of the Act, in the case of appeals in respect to public officers and pensioners—

- (a) the total tax charged shall be deducted from the salary or pension payable, respectively, to the public officer or pensioner by monthly

instalments in such amounts as shall be specified from time to time by the Comptroller:

Provided that in no case except with the consent of the person chargeable shall the amount of the tax deducted in any one month exceed one half the emoluments or pension payable for that month:

Provided also that with a view to spreading the deductions evenly over the year provisional deductions on the basis of the tax expected to be due including any tax in arrears shall be made for the early months of the year before the tax has been assessed;

- (b) the Comptroller shall notify the official or pensioner and shall instruct the Accountant-General or the appropriate officer of any department as early as possible in each year as to the amount of tax to be deducted from the emoluments or pension of any person chargeable;
- (c) the Accountant-General or the appropriate officer of any department shall, by the 15th January immediately after the end of each year, furnish to the Comptroller a list setting out for every person from whom tax has been deducted the total gross amount of emoluments or pension paid during the year, and the total tax deducted;
- (d) unless the deductions made agree with the tax payable for the year together with any tax in arrears, the Comptroller shall furnish to each person chargeable as soon as possible after the end of the year in which the assessment was made, particulars of the tax due, tax deducted and the balance payable or repayable and shall state how such balance is to be cleared, and—
  - (i) where a balance of tax is still due or where the balance is repayable it may be taken into account in determining the deduction to be made for the current year;
  - (ii) where any balance cannot be recovered by deduction it shall, on the instructions of the Comptroller, be payable direct to the Collector and if not paid on demand shall be deemed in arrears for the purposes of section 69 three months after the issue of the instructions;
- (e) in order to facilitate the keeping of records, deductions other than the last deduction for any year may be made in dollars only, ignoring cents.

### **The Commonwealth.**

**10.** The countries deemed to form part of the Commonwealth, for the purposes of section 2 of the Act, shall be those set out in the Schedule 2 to these Rules.

### **Annual Value of Land and Improvements.**

**11.** (1) The gross annual value of land and improvements thereon shall be determined at 5% of the estimated current market value, but in any case at a sum less than the current annual value in force for the purpose of the Property Tax Act.

(2) The annual value chargeable to tax under section 3 (c) of the Act, hereinafter called the nett annual value, shall be the gross annual value less—

- (a) the amount of the land and property tax paid during the basic year;
- (b) the amount expended on repairs during the basic year:

Provided that where the amount expended on repairs in any year exceeds the amount required to reduce the nett annual value to nil the balance until exhausted may be carried forward and deducted similarly for the next five years in succession.

### **Special Deductions for Capital Expenditure – Section 11.**

**12.** (1) The capital expenditure shall be exclusive of any expenditure on the acquisition of any land.

(2) The rate of annual allowance for any industrial building or structure shall be 2%, but where the outside of the building is of wood or corrugated iron the rate shall be 3%.

(3) The rate of annual allowance for any plant or machinery shall be such rate as the Comptroller of Inland Revenue considers reasonable having regard to the estimated future life of such plant or machinery.

### **Pension and Superannuation Funds – Section 16.**

**13.** (1) An application under section 16 shall set out details of the fund or the proposed fund and two copies of the rules and accounts shall be enclosed:

Provided that where such fund is established in the United Kingdom and is approved by the Commissioners of Inland Revenue in that country it shall be sufficient if a certificate is furnished by such Commissioners that the fund is approved by them and setting out any special or abnormal conditions and one copy of the rules is supplied.

(2) The Commissioners shall make such conditions as they think fit for the approval of the fund which may include the provision of—

- (a) a copy of all the amendments to the rules;
- (b) a copy of the accounts for each year;
- (c) particulars to be supplied annually of any contributions which are returned to any members on their ceasing to be members;
- (d) provision for tax to be recovered from the trustees in respect of such returned contributions;
- (e) particulars of any special contributions to the fund by the employer.

### **Apportionments.**

**14.** (1) Where it is necessary for any purpose of the Act to ascertain—

- (a) the proportion of profits or gains for any part of an accounting period for which separate accounts are not available; or
- (b) the proportion of annual value of property,

such proportion shall be based on the number of months or days in the relative periods, unless special conditions such as seasonal trading apply, when the apportionment shall be made on such basis as seems to the Comptroller to be just and reasonable.

(2) Where it is necessary, for any purpose of the Act, to ascertain the tax chargeable or charged on any particular part of the total assessed income of any person then such tax shall be deemed to be the same proportional part of the total tax as the assessed income of that part bears to the total assessed income.

**Penalty Interest For Non-Payment of Tax – Section 69.**

15. (1) When tax becomes in arrear a sum of 5% shall be added thereto and if the tax and such sum is not paid within two and a half calendar months of the date when the tax became in arrear the said sum shall be increased to 10%.

(2) Where tax is in arrears interest shall be calculated on such tax at 8% per annum from the date on which the tax became in arrears, and where the interest so calculated exceeds the sum of 10% specified in the preceding sub-rule such interest shall be substituted for such sum:

Provided that in no case shall the date from which interest is calculated be before 1st January, 1961:

Provided further that the sum referred to in sub-rule (2) shall not be payable in respect of the same arrears.

(3) The interest at 8% per annum referred to in the preceding sub-rule shall be calculated by reference to completed calendar months, and where part of the tax has been paid and part has not the calculation shall have regard to the various payments from time to time.

**Returns by Employers of Remuneration – Section 47.**

16. (1) The return made by an employer of the remuneration paid to an employee need not include the name of any employee whose—

- (a) total remuneration does not exceed \$1, 000.00; or
- (b) total remuneration does not exceed \$500.00 where the employment is part time or such employee is a married woman.

(2) The return shall be in such form as is approved by the Comptroller from time to time.

—————  
**SCHEDULE 1 TO THE RULES**

*(Rule 3)*

CONFIDENTIAL

**DECLARATION OF SECRECY**

**INCOME TAX ACT, CAP. 20.22**

I ..... of ..... a person having official duty under the Income Tax Act, hereby declare that I will regard and deal with the returns, assessment lists and copies of such lists relating to the income or items of the income of any person, as secret and confidential documents and that I will not at any time divulge in any manner anything contained in such returns, lists or copies, save as is authorised by the Act

Declared before me and in the presence of  
Magistrate for District .....

—————

**SCHEDULE 2 TO THE RULES***(Rule 10)*

Aden	Channel Islands
Australia	Cyprus
Antigua	Dominica
Bahamas	Falkland Islands
Barbados	Fiji
Belize	Gambia
Bermuda	Gibraltar
Botswana	Gilbert and Ellice Islands
British Virgin Islands	Ghana
Brunei	Grenada
Canada	Guyana
Ceylon	Hong Kong
India	St. Lucia
Isle of Man	St. Vincent
Jamaica	Sarawak
Kenya	Seychelles
Malawi	Sierra Leone
Malta	Singapore
Malaysia	Solomon Islands
Mauritius	Somalia
Montserrat	Swaziland
Namibia	Tanzania
New Hebrides	Tonga
New Zealand	Trinidad and Tobago
Nigeria	Uganda
North Borneo	United Kingdom of Great Britain and Northern Ireland
Pakistan	Zambia
Republic of South Africa	Zimbabwe
St. Helena	

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## THIRTEENTH SCHEDULE

*(Section 90)*

### INCOME TAX (DOUBLE TAXATION RELIEF) (MONACO) ORDER

#### **Citation.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (Monaco) Order.

#### **Declaration.**

2. It is hereby declared—
- (a) that the arrangement specified in the Schedule to this Order has been made with the Government of Monaco; and
  - (b) that it is expedient that this arrangement shall have effect.

## SCHEDULE TO THE ORDER

*(Section 2)*

Convention Between Saint Kitts And Nevis And The Principality of Monaco For The Avoidance Of Double Taxation And The Prevention Of Fiscal Evasion With Respect To Taxes On Income And Capital.

The Government of Saint Kitts and Nevis and the Government of the Principality of Monaco, desirous to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, have decided to conclude this Convention:

#### Article 1

##### PERSONS COVERED

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

#### Article 2

##### TAXES COVERED

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, on total capital, or on elements of income or of capital, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital gains.
3. The existing taxes to which the Convention shall apply are in particular:
  - a) in the case of Saint Kitts and Nevis all taxes imposed or administered by Saint Kitts and Nevis;

- b) in the case of the Principality of Monaco: the profits tax (l'impôt sur les bénéfices); (hereinafter referred to as "Monegasque tax");
4. The Convention shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the 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 that have been made in their taxations laws.

### Article 3

#### GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
- a) the term "Saint Kitts and Nevis" means the twin island Federation of Saint Kitts (Saint Christopher) and Nevis and when used in a geographical sense, means the territory of the island of Saint Kitts and the island of Nevis;
  - b) the term "Monaco" means the Principality of Monaco and, when used in a geographical sense, means the territory of the Principality of Monaco;
  - c) the term "person" includes an individual, a company and any other body of persons;
  - d) the term "company" means any juridical person or any entity that is treated as a juridical person for tax purposes;
  - e) the term "enterprise" applies to the carrying on of any activity or business;
  - 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 "international traffic" means any transport by a ship, aircraft or road vehicle operated by an enterprise that has its place of effective management in a Contracting State except when the ship, aircraft or road vehicle is operated solely between places in the other Contracting State;
  - h) the term "competent authority" means:
    - (i) in the case of Saint Kitts and Nevis: the Financial Secretary or his authorised representative;
    - (ii) in the case of Monaco: the Counsellor of the Government for Finance and Economy or his authorised representative;
  - i) the term "national" means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - j) the term "activity", in comparison with an enterprise, and "business" include the performance of professional services and of other activities of an independent character.



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

#### Article 4

##### RESIDENT

1. For the purposes of this Convention, the term “resident of a Contracting State”, means:

- a) in the case of Saint Kitts and Nevis, any person who, under the laws of Saint Kitts and Nevis has in Saint Kitts and Nevis his domicile, residence, place of management or any other criterion of a similar nature.
- b) in the case of the Principality of Monaco, any person who, under the laws of the Principality of Monaco, has in Monaco his domicile, residence, or place of management, and also includes that State and any local authorities thereof.

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

- a) he shall be deemed to be a resident only of the 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 only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both 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, a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the 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, and
  - f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A construction or assembling site constitutes a permanent establishment only if it lasts more than twelve months.
4. 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 merchandise belonging to the enterprise;
  - b) the maintenance of a stock of merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - c) the maintenance of 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 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 subparagraphs a) to e), 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 paragraphs 1 and 2, where a person — other than an agent of an independent status to whom paragraph 6 applies — is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name 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 4 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.
6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State 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 Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## Article 6

## INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State shall be taxable exclusively in that other State.
2. The term “immovable property” shall have the meaning which it has under the law of Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, dead or alive livestock used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or leasing, and use in any other form of immovable property.
4. The provisions of paragraphs 1 and 3 shall apply to the income from immovable property of an enterprise.

## 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, 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 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 executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine 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 paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

7. Where profits include items of income 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, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

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

2. Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

3. If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

#### 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 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 the 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 a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be subject to withholding taxes in the Contracting State of which the company paying the dividends is a resident, and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, 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;
  - b) 0% per cent of the gross amount of the dividends, if the beneficial owner is an individual and resident of either Contracting State or a partnership held by individuals and beneficial owners who are resident of either Contracting State.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance (life interest)” shares or “jouissance” rights, mining shares, founders’ shares of 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 State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 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 and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## Article 11

## INTEREST

1. Interest arising in a Contracting State and whose beneficial owner is a resident of the other contracting State are only taxed in that other State.
2. 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, including premiums and prizes attaching to such securities, bonds or debentures.

3. The provisions of paragraph 1 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 and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provision of Article 7 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, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In 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.

## Article 12

### ROYALTIES

1. Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

2. The term “royalties” as used in this Article, means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 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 and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In 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.

## Article 13

### CAPITAL GAINS

1. Gains derives by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State shall be taxable exclusively in that other State.

2. 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, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircrafts or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

##### INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 15, 17 and 18, 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 derived therefrom may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 State, and
- c) the remuneration is not borne by a permanent establishment 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, an aircraft or a road vehicle operated in international traffic, or aboard a boat engaged in inland waterways, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

4. Notwithstanding the provisions of this Article, the Social Services Levy imposed by Saint Kitts and Nevis shall be applicable in respect of all employment exercised in Saint Kitts and Nevis.

#### Article 15

##### DIRECTORS' FEES

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

#### Article 16

##### ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of Articles 7 and 14, 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, or as a model from his or her 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 and 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

#### Article 17

##### PENSIONS

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, paid to a resident of a Contracting State in consideration of past employment, shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pensions and other amounts paid in application of the Social Security law of a Contracting State shall be taxable only in that State.

3. Notwithstanding with the provisions of paragraph 1, pensions and other similar remuneration (fixed payments included) derived from a Contracting State and paid to a resident of the other Contracting State, are not taxable in that other State if these payments derived from contributions, doles or insurance premiums paid to an additional pension regime by the beneficiary or on behalf of him, or allowances made by the employer to an internal regime, and if these contributions, doles, insurance premiums or allowances have been effectively subjected to tax in the first Contracting State.

#### Article 18

##### GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration paid by a Contracting State or a political subdivision thereof to an individual, in respect of services rendered to that State or authority shall be taxable only in that State.

b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and if 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) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting State or one of the local authorities thereof to an individual in respect of services rendered to that State or this authority shall be taxable only in that State.

b) However, such pensions and other similar remuneration 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 14, 15, 16 and 17 shall apply to salaries, wages, pensions, and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting State or one of the local authorities thereof.



## Article 19

## STUDENTS

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

## Article 20

## OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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 and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

## Article 21

## CAPITAL

1. Capital represented by immovable property referred to in Article 6, owned by a resident of a Contracting State and situated in the other Contracting State, shall be taxable exclusively in that other State.
2. Capital represented by 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, may be taxed in that other State.
3. Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.
4. All other elements of capital of a resident of a Contracting State shall be taxable only in that State.

## Article 22

## ELIMINATION OF DOUBLE TAXATION

1. In the case of Saint Kitts and Nevis, double taxation shall be eliminated as follows:

Where a resident of Saint Kitts and Nevis derives income which, in accordance with the provisions of this Agreement, is taxable in Monaco, then Saint Kitts and Nevis shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in Monaco provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from Monaco.

2. In the case of Monaco, double taxation shall be eliminated as follows:

Where a resident of Monaco derives income which, in accordance with the provisions of this Agreement, is taxable in Saint Kitts and Nevis, then Monaco shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in Saint Kitts and Nevis provided that such deduction shall not exceed that part of the tax, as computed before the deduction is given, which is attributable to the income derived from Saint Kitts and Nevis.

3. For the purposes of paragraphs 1 and 2 of this Article, the terms “tax paid” shall be deemed to include the amount of tax which would have been paid in the Contracting State, should an exemption or reduction not be granted in accordance with the laws and regulations of the Contracting State.

#### Article 23

##### 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of

Article 1, also apply to persons who are not residents of one or both of the Contracting States.

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 in enterprises of that other State carrying on the same activities. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 4 of Article 12, 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. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted 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 the first-mentioned State are or may be subjected.

5. The provisions of this Article shall apply to taxes referred to by this Convention.

#### Article 24

##### 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 or

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 23, to that of the Contracting State of which he is a national. The case must be presented within five years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

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. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

#### Article 25

##### EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes provided by the Convention imposed on behalf of the Contracting States or of their local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.

3. In no case shall the provisions of paragraphs 1 and 2 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 (*ordre public*).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions or paragraph 3 be construed to permit a Contracting State to decline to supply information solely asked because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### Article 26

##### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

#### Article 27

##### ENTRY INTO FORCE

1. Each Contracting State shall notify to the other Contracting State, in writing by diplomatic channels, the achievement of procedures required by its legislation in order to put into effect this Convention. The Convention shall enter into force at the date of the reception of the latter of these notifications.

2. The Convention shall be applicable:

- a) in the case of withholding taxes, to income attributed on or after the first January of the calendar year following immediately to the year during which the Convention shall enter into force;
- b) in the case of other taxes on income or capital, to taxes due for any taxable year beginning on or after the first January of the calendar year following immediately to the year during which the Convention shall enter into force.

3. The provisions of Article 25 of this Convention shall be applicable in respect of the tax years beginning the first January of the taxable year following to the year during which this Convention shall enter into force, or after this date.

#### Article 28

##### TERMINATION

1. This Convention shall remain in force until terminated by a Contracting State. Each Contracting State can terminate this Convention through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year beginning after the termination of a five-year period from the date of its entry into force.

2. The Convention shall cease to have effect:

- a) in the case of withholding taxes, to income attributed on or after the first January of the calendar year following immediately to the year during which the notice is given;
- b) in the case of other taxes on income or capital, to taxes due for any taxable year beginning on or after the first January of the calendar year following immediately to the year during which the notice is given.

IN WITNESS WHEREOF, the undersigned, duly authorized for this purpose, have signed this Convention.

Done in two copies at Basseterre, St. Kitts in the Federation of Saint Kitts and Nevis on the 17th day of September 2009.

in French and English language, the two texts are evidence.

For the Government of the  
the  
Saint Kitts and Nevis  
Denzil Douglas (Dr)  
Prime Minister  
to

For the Government of  
the  
Principality of Monaco  
H. E. Gilles Noghes  
Ambassador of Monaco

USA

#### ADDENDUM

#### EXCHANGE OF LETTERS REGARDING ARTICLE 25 OF THE TREATY BETWEEN SAINT KITTS AND NEVIS AND THE PRINCIPALITY OF MONACO

I have the honour to refer to Article 25 of the tax Convention between Saint Kitts and Nevis and the Principality of Monaco and propose in the name of the Government of Saint Kitts and Nevis to add the following precisions:

1. It is admitted that the competent authority of the requested State shall provide on request of the competent authority of the State requesting the information for purposes referred to in Article 25.
2. The competent authority of the applicant State shall provide in support of its written request with the most possible details the following information to the competent authority of the requested State when introducing a request for information under the Convention, to demonstrate the foreseeable relevance of the information to the request:
  - a) the identity of the person under examination or investigation; as well as all probate documents and other circumstantial evidences which the request is based upon;
  - b) the period on which information is requested;
  - c) the indications on the information sought, notably its nature and the form in which the applicant State wishes to receive information from the requested State;
  - d) the tax purpose for which the information are requested;

- e) reasons which allow to consider that the information requested are held in the requested State or are in the possession or under the control of a person within the jurisdiction of the requested State;
  - f) to the extent known, the name and address of any person who allows to consider she is in possession of the requested information;
  - g) a statement specifying that the request is in conformity with the law and regulations, as well as the administrative practices of the requesting State, that if the requested information were within the jurisdiction of the applicant State, then the competent authority of the said State would be able to obtain the information under the laws of the requesting State or in the normal course of administrative practices and that it is in conformity with this Convention;
  - h) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
3. The competent authority of the requested State may decline to provide the requested information when the request is not made in conformity with this Convention.

I have the honour to propose that, if the above is acceptable for your Government, this letter and your agreement shall constitute together an Agreement between our two Governments which shall become an integral part of the Convention.

**DONE** by exchange of letters on behalf of the Government of Saint Christopher and Nevis signed by Dr. Denzil Douglas, Prime Minister and dated 17th September 2009 and on behalf of the Government of the Principality of Monaco signed by H. E. Gilles Noghes, Ambassador of Monaco to the USA and dated 17th September 2009.

*(Thirteenth Schedule inserted by S.R.O. 36/2011)*

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**FOURTEENTH SCHEDULE**

*(Section 90)*

**INCOME TAX (DOUBLE TAXATION RELIEF) (SAN MARINO) ORDER**

**Citation.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (San Marino) Order.

**Declaration.**

2. It is hereby declared—
- (a) that the arrangement specified in the Schedule to this Order has been made with the Government of San Marino; and
  - (b) that it is expedient that this arrangement shall have effect.

**SCHEDULE TO THE ORDER**

**CONVENTION BETWEEN THE GOVERNMENT OF THE REPUBLIC OF  
SAN MARINO AND THE GOVERNMENT OF SAINT KITTS AND NEVIS  
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO  
TAXES ON INCOME**

The Government of the Republic of San Marino and the Government of Saint Kitts and Nevis, hereunder the “Contracting States”, wishing to conclude a Convention for the avoidance of double taxation with respect to taxes on income and to strengthen the disciplined development of economic relations between the two States in the framework of greater cooperation, have agreed the following:

Article 1

PERSONS COVERED

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

Article 2

TAXES COVERED

1. This Convention shall apply to taxes on income imposed on behalf of a Contracting State or of its political or administrative subdivisions or local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amounts of wages or salaries paid by enterprises, as well as taxes on capital appreciation.
3. The existing taxes to which the Convention shall apply are in particular:

- a) in the case of San Marino the general income tax which is levied:
  - (i) on individuals;
  - (ii) on bodies corporate and proprietorships;even if collected through a withholding tax (hereunder referred to as “San Marino tax”);
- b) in the case of Saint Kitts and Nevis:  
all taxes imposed or administered by Saint Kitts and Nevis (hereunder referred to as “Saint Kitts and Nevis tax”).

4. The Convention shall apply also to any identical or substantially similar taxes that 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 that have been made in their taxation laws.

### Article 3

#### GENERAL DEFINITIONS

1. For the purposes of this Convention, unless the context otherwise requires:
  - a) the term “San Marino” means the territory of the Republic of San Marino, including any other area within which the Republic of San Marino, in accordance with international law, exercises sovereign rights or jurisdiction;
  - b) the term “Saint Kitts and Nevis” means [the twin island Federation of Saint Kitts (St. Christopher) and Nevis] and, when used in a geographical sense, means the territories of Saint Kitts and Nevis;
  - c) the terms “a Contracting State” and “the other Contracting State” mean, as the context requires, San Marino or Saint Kitts and Nevis;
  - d) the term “person” includes an individual, a company and any other body of persons;
  - e) the term “company” means any body corporate or any entity that 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 “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
  - h) the term “national” means:
    - (i) any individual possessing the nationality of a Contracting State;
    - (ii) any legal person, partnership or association deriving its status as such from the laws in force in a Contracting State;
  - i) the term “competent authority” means:



- (i) in San Marino, the Ministry of Finance or his authorized representative;
- (ii) in Saint Kitts and Nevis, the Financial Secretary or his authorized representative.

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

#### 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, and also includes that State and any political or administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income from sources in that State.

2. Where by reason of the provisions of paragraph 1 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 only of the 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 only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the 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 States, he shall be deemed to be a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
- d) if he is a national of both 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 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident only of the 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) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

3. A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 12 months.

4. 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), 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 paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name 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 4 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.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that State 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 Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## Article 6

## INCOME FROM IMMOVABLE PROPERTY

1. Income derived by a resident of a Contracting State from immovable property (including income from agriculture or 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 private law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in another form of immovable property.
4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to the 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, 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.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of a permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.
4. Insofar as it has been customary in a Contracting State to determine 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 paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

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

7. Where profits include items of income 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 from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

2. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship is a resident.

3. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

#### 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 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 the 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 consult each other.

Article 10

DIVIDENDS

1. Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
  - a) 5% percent of the gross amount of the dividends if the beneficial owner is a company which has held directly at least 25 percent of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends;
  - b) 7.5% percent of the gross amount of the dividends if the beneficial owner is a company which has held directly at least 10 percent but less than 25 percent of the capital of the company paying the dividends for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends;
  - c) 10% percent of the gross amount of the dividends in all other cases.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ 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 State of which the company making the distribution is a resident.
4. The provisions of paragraphs 1 and 2 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 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 Article 7 or Article 14, as the case may be, shall apply.
5. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

## Article 11

## INTEREST

1. Interest arising in a Contracting State and paid to a resident of the other Contracting State shall be paid only in that State.
2. 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, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
3. The provisions of paragraphs 1 to 2 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 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, as the case may be, shall apply.
4. Interest shall be deemed to arise in a Contracting State when the payer is 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 a 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 Contracting State in which the permanent establishment or the fixed base is situated.
5. 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, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In 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.

## Article 12

## ROYALTIES

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State shall be taxed only in that other State.
2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, including software, cinematograph films and recordings for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, as well as for the use of, or the right to use, industrial, commercial or scientific equipment or for information concerning industrial, commercial or scientific experience.
3. The provisions of paragraphs 1 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 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, as the case may be, shall apply.

4. Royalties shall be deemed to arise in a Contracting State when the payer is 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 a fixed base, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or the fixed base is situated.

5. 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, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In 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.

#### Article 13

##### CAPITAL GAINS

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

2. 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 gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting State of which the alienator is a resident.

#### Article 14

##### INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

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

## Article 15

## INCOME FROM EMPLOYMENT

1. Subject to the provisions of Articles 16, 18, 19 and 20, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:
  - a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in 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 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 only be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

## Article 16

## DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors or board of auditors 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, 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, 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, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.



2. The provisions of paragraph 1 shall not apply if the recipient is not liable to tax in respect of such income in the State of which he is a resident and according to the laws of that State. In such case such income shall be taxable in the State in which it arises.

3. Notwithstanding the provisions in paragraph 1 of this Article, pensions and other similar remuneration paid by a Contracting State under provisions of the social security legislation shall be taxable solely in that State.

#### Article 19

##### GOVERNMENT SERVICE

1. a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political or administrative 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 salaries, wages and other similar 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 or administrative 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, 17 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 Contracting State or a political or administrative subdivision or a local authority thereof.

#### Article 20

##### PROFESSORS, TEACHERS AND RESEARCHERS

A professor, teacher or researcher who makes a temporary visit to a Contracting State for a period not exceeding 2 years for the purpose of teaching or conducting research at a university, college, school, or other similar educational institution, and who is, or immediately before such visit was, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State in respect of remuneration from such teaching or research.

#### Article 21

##### STUDENTS AND BUSINESS APPRENTICES

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

## Article 22

## OTHER INCOME

1. Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.
2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, 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 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, as the case may be, shall apply.

## Article 23

## ELIMINATION OF DOUBLE TAXATION

1. It is agreed that double taxation shall be avoided in accordance with the following paragraphs of this Article.
2. In San Marino:
  - a) Where a resident of San Marino derives income which, in accordance with the provisions of this Convention, may be taxed in Saint Kitts and Nevis, San Marino shall, subject to the provisions of paragraphs b) and c), exempt such income from tax but may, nevertheless, in calculating the amount of tax on the remaining income of such resident, apply the same tax rate which would apply if the income in question were not exempt.
  - b) Where a resident of San Marino derives income which, in accordance with the provisions of Articles 10, may be taxed in Saint Kitts and Nevis, San Marino shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in Saint Kitts and Nevis. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income arising in St. Kitts and Nevis.
  - c) Notwithstanding the provisions of paragraph b), where a company which is a resident of San Marino has held at least 25 percent of the capital of a company which is a resident of Saint Kitts and Nevis paying dividends, interest or royalties for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends, or prior to the payment of interest or royalties, San Marino shall exempt from tax the dividends, interest and royalties paid by the company which is a resident of Saint Kitts and Nevis by the company which is a resident of San Marino.
3. In Saint Kitts and Nevis:
  - a) Where a resident of Saint Kitts and Nevis derives income which, in accordance with the provisions of this Convention, may be taxed in San Marino, Saint Kitts and Nevis shall, subject to the provisions of paragraphs b) and c), exempt such income from tax but may, nevertheless, in calculating the amount of tax on the remaining income

of such resident, apply the same tax rate which would apply if the income in question were not exempt.

- b) Where a resident of Saint Kitts and Nevis derives income which, in accordance with the provisions of Articles 10 may be taxed in San Marino, Saint Kitts and Nevis shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax paid in San Marino. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income arising in San Marino.
- c) Notwithstanding the provisions of paragraph b), where a company which is a resident of Saint Kitts and Nevis has held at least 25 percent of the capital of a company which is a resident of San Marino paying dividends, interest or royalties for an uninterrupted period of at least 12 months prior to the decision to distribute the dividends, or prior to the payment of interest or royalties, Saint Kitts and Nevis shall exempt from tax the dividends, interest and royalties paid by the company which is a resident of San Marino by the company which is a resident of Saint Kitts and Nevis.

#### Article 24

##### 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, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting States.
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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 7 of Article 11, or paragraph 6 of Article 12, 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 the first-mentioned State are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## Article 25

## 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 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Convention.
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. The mutual agreement procedure shall expire by the end of the fourth year following that in which the case was presented by the taxpayer. If an agreement is reached, it shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.
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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.
4. The competent authorities of the Contracting States may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## Article 26

## EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 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) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. 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.
3. In no case shall the provisions of paragraphs 1 and 2 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 (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

#### Article 27

##### MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

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

#### Article 28

##### REFUNDS

1. Taxes collected in a Contracting State through a withholding tax shall be refunded upon request of the interested party where the right to levy such taxes is limited by the provisions of this Convention.

2. Refund claims to be submitted within the time limits set forth in the laws of the Contracting State which has to make the refund, shall be accompanied by an official declaration of the Contracting State of which the taxpayer is a resident stating that such taxpayer meets the requirements to be entitled to the benefits of this Convention.

3. The competent authorities of the Contracting State shall decide by mutual agreement, in accordance with the provisions of Article 25 of this Convention, the mode of application of this Article.

#### Article 29

##### ENTRY INTO FORCE

This Convention shall enter into force on the date of the last notification by both Contracting States of the completion of their domestic procedures of ratification necessary for its entry into force. The provisions of the Convention shall have effect:

- a) with respect to taxes withheld, to the amounts collected as from 1 January of the calendar year next following that in which this Convention enters into force; and

- b) with respect to the other taxes on income, to the taxes referred to taxable periods as from 1 January of the calendar year next following that in which this Convention enters into force.

## Article 30

## TERMINATION

This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention not earlier than 5 years from its entry into force, through diplomatic channels, by giving notice of termination at least six months before the end of the calendar year. In such event, the Convention shall cease to have effect:

- a) with respect to taxes withheld, to the amounts collected as from 1 January of the calendar year next following that in which the notification of termination is given; and
- b) with respect to the other taxes on income, to the taxes referred to taxable periods as from 1 January of the calendar year next following that in which the notification of termination is given.

IN WITNESS THEREOF, the undersigned, duly authorised to this end, have signed this Convention.

Done in duplicate at New York on 20th April 2010, in the Italian and English languages, all texts being equally authentic. In case of divergence between the texts the English text shall prevail.

H.E. Mr. Delano Bart

Permanent Representative to the UN  
UN

For the Government of Saint Kitts and Nevis  
Republic

Daniele D. Bodini

Permanent Representative to the  
UN

For the Government of the  
of San Marino

PROTOCOL

To the Convention between the Government of the Republic of San Marino and the Government of Saint Kitts and Nevis for the avoidance of double taxation with respect to taxes on income.

When signing the Convention concluded today between the Government of the Republic of San Marino and the Government of Saint Kitts and Nevis for the avoidance of double taxation with respect to taxes on income, the following additional provisions forming integral part of this Convention have been agreed upon.

It is understood that:

1. With respect to paragraph 1, point e) of Article 3, in San Marino a trust shall be treated as a body corporate for tax purposes where and only to the extent in which such trust is subject to San Marino income tax.
2. With respect to paragraph 2 of Article 5, a “permanent establishment” may include a server.
3. With respect to Article 8, profits from the operation of ships or aircraft in international traffic shall include:
  - (a) profits deriving from the bareboat charter of ships and aircraft operated in international traffic;
  - b) profits deriving from the use or letting of containers where such profits are occasional and secondary in respect of other profits deriving from the operation of ships or aircraft in international traffic.
4. The provisions in paragraph 3 of Article 28 shall not prejudice the power of the competent authorities to determine, by mutual agreement, other procedures for the application of the limitations set forth in this Convention.

IN WITNESS THEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

**DONE** induplicate at New York on 20th April 2010, in the Italian and English languages, all texts being equally authentic. In case of divergence between the texts the English text shall prevail.

H.E. Mr. Delano Bart  
Permanent Representative to the UN  
UN  
For the Government of Saint Kitts and Nevis  
Republic

Daniele D. Bodini  
Permanent Representative to the  
UN  
For the Government of the  
Republic  
of San Marino

*(Fourteenth Schedule inserted by S.R.O. 37/2011)*