

No. 33637

**UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND
and
REPUBLIC OF KOREA**

Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains (with exchange of notes). Signed at Seoul on 25 October 1996

Authentic texts: English and Korean.

Registered by the United Kingdom of Great Britain and Northern Ireland on 25 March 1997.

**ROYAUME-UNI DE GRANDE-BRETAGNE
ET D'IRLANDE DU NORD
et
RÉPUBLIQUE DE CORÉE**

Convention tendant à éviter la double imposition et à prévenir l'évasion fiscale en matière d'impôts sur le revenu et sur les gains en capital (avec échange de notes). Signée à Séoul le 25 octobre 1996

Textes authentiques : anglais et coréen.

Enregistrée par le Royaume-Uni de Grande-Bretagne et d'Irlande du Nord le 25 mars 1997.

CONVENTION¹ BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF KOREA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS

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

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

Have agreed as follows:

ARTICLE 1

Personal scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes covered

(1) This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

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

(3) The existing taxes to which this Convention shall apply are in particular:

(a) in the case of Korea:

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the inhabitant tax; and
- (iv) the special tax for rural development;

(hereinafter referred to as “Korean tax”);

(b) in the case of the United Kingdom:

- (i) the income tax;
- (ii) the corporation tax; and
- (iii) the capital gains tax;

(hereinafter referred to as “United Kingdom tax”).

¹ Came into force on 30 December 1996 by the exchange of the instruments of ratification, which took place at Seoul, in accordance with article 29.

(4) The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

General definitions

- (1) For the purposes of this Convention, unless the context otherwise requires:
- (a) the term “Korea” means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (b) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;
 - (c) the term “national” means:
 - (i) in relation to Korea, any individual possessing Korean nationality and any legal person, partnership and association deriving its status as such from the laws in force in Korea;
 - (ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom;
 - (d) the terms “a Contracting State” and “the other Contracting State” mean Korea or the United Kingdom, as the context requires;
 - (e) the term “person” includes an individual, a company and any other body of persons, but does not include a partnership;
 - (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (g) 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;
 - (h) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (i) the term “competent authority” means:
 - (i) in the case of Korea, the Minister of Finance and Economy or his authorised representative;

- (ii) in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative.

(2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State concerning the taxes to which the Convention applies.

ARTICLE 4

Resident

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

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

- (a) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;
- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
- (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated. In cases of doubt the competent authorities of the Contracting States shall have recourse to paragraph (3) of Article 26.

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 building site, a construction, assembly or installation project or supervisory activities in connection therewith constitutes a permanent establishment only if such site, project or activities continue for a period of 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 or display of goods or merchandise belonging to the enterprise;
 - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
 - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
 - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
 - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph, provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
- (5) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, where a person—other than an agent of an independent status to which paragraph (6) of this Article applies—is acting in a Contracting State on behalf of an enterprise of the other Contracting State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned Contracting State, in respect of any activities which that person undertakes for the enterprise, if
- (a) he has, and habitually exercises in the first-mentioned Contracting State an authority to conclude contracts on behalf of the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) of this Article which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph; or
 - (b) he maintains in the first-mentioned Contracting State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

(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 Contracting 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 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 and sources and other natural resources; ships and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

ARTICLE 7

Business profits

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

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

(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 Contracting State in which the permanent establishment is situated or elsewhere.

(4) In so far 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) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles 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 of this Article, 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 or capital gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

ARTICLE 8

Shipping and air transport

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

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

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

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

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

ARTICLE 9

Associated enterprises(1) **Where**

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

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

(2) Where a Contracting State includes in the profits of an enterprise of that State—and taxes accordingly—profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to 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. The competent authorities of the Contracting States shall consult each other in determining such adjustment with due regard being had to the other provisions of this Convention.

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 recipient is the beneficial owner of the dividends 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 (other than a partnership) which controls, directly or indirectly, at least 25 per cent of the voting power in the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

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 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 and also includes any other item payable by an enterprise to an associated

enterprise which, under the laws of the Contracting State of which the company paying the dividends is a resident, is treated as a dividend or distribution of a company.

For the purpose of this paragraph an enterprise of a Contracting State shall be regarded as an associated enterprise of an enterprise of the other Contracting State where:

- (a) one enterprise participates directly or indirectly in the management, control or capital of the other enterprise; or
- (b) the same persons participate directly or indirectly in the management, control or capital of both enterprises.

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

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

(7) In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of paragraph (6) of this Article, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

ARTICLE 11

Interest

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

(2) However, such interest may also be taxed in the Contracting State in which it arises and according to the laws of that State, but if the recipient is the beneficial owner of the interest the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of Article 7 of this Convention, interest arising in Korea which is paid to and beneficially owned by a resident of the United Kingdom shall be exempt from Korean tax if it is paid in respect of a loan made, guaranteed or insured, or any other debt-claim or credit guaranteed or insured, by the United Kingdom Export Credits Guarantee Department.

(4) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if the interest is paid to and beneficially owned by the Government of the other Contracting State, by any local authority thereof, the central bank of that other Contracting State, or any financial institution wholly owned by that Government or that central bank, or by both.

(5) 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. The term interest shall not include any item which is treated as a distribution under the provisions of Article 10 of this Convention.

(6) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(7) Interest shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that Contracting 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 State in which the permanent establishment or fixed base is situated.

(8) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds the amount (if any) 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.

(9) The relief from tax provided for in paragraph (2) of this Article shall not apply if the beneficial owner of the interest:

- (a) is exempt from tax on that interest in the Contracting State of which he is a resident; and

(b) sells, or contracts to sell, the debt-claim from which that interest is derived within three months from the date on which he acquired that debt-claim.

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

(11) In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of paragraph (10) of this Article, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

ARTICLE 12

Royalties

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

(2) However, such royalties may also be taxed in the Contracting State in which they arise, and according to the laws of that Contracting State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed:

- (a) 2 per cent of the gross amount of such royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment; and
- (b) 10 per cent of the gross amount of such royalties in all other cases.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, or films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information (know-how) concerning industrial, commercial, or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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

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

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

(8) In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of paragraph (7) of this Article, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

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 derived by a resident of a Contracting State from the alienation of:

- (a) shares, other than shares quoted on an approved Stock Exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in the other Contracting State, or
- (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in the other Contracting State, or of shares referred to in subparagraph (a) above,

may be taxed in that other State.

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

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

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

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

ARTICLE 14

Independent personal services

(1) Income derived by a resident of a Contracting State in respect of professional services or 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 State but only so much of it as is attributable to that fixed base.

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

ARTICLE 15

Dependent personal services

(1) Subject to the provisions of Articles 16, 18, 19, 20 and 21 of this Convention salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days 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 be taxed in the Contracting State of which the enterprise operating the ship or aircraft is a resident.

ARTICLE 16**Directors' fees**

Directors' fees and 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 17**Artistes and sportsmen**

(1) Notwithstanding the provisions of Articles 14 and 15 of this Convention, 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 Contracting State.

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

(3) Notwithstanding the provisions of paragraphs (1) and (2) of this Article, income derived by entertainers or sportsmen who are residents of a Contracting State from activities exercised in the other Contracting State under a special programme of cultural exchange agreed upon between the Governments of both Contracting States, shall be exempt from tax in that other Contracting State.

ARTICLE 18**Pensions**

- (1) Subject to the provisions of paragraph (2) of Article 19 of this Convention:
- (a) pensions and other similar remuneration paid in consideration of past employment, and
 - (b) any annuity paid.

to an individual who is a resident of a Contracting State shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable to an individual periodically at stated times during his life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19**Government service**

- (1) (a) Salaries, wages and other similar remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.
- (b) However, such 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 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 State if the individual is a resident of, and a national of, that State.
- (3) The provisions of Articles 15, 16 and 18 of this Convention shall apply to salaries, wages and other similar remuneration and pensions paid by a Contracting State or a political subdivision or a local authority in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.
- (4) The provisions of paragraphs (1), (2) and (3) of this Article shall likewise apply in respect of salaries, wages and other similar remuneration and pensions paid by a government-owned institution performing functions of a governmental nature which in the case of Korea shall include the Bank of Korea, the Korea Export-Import Bank, the Korea Development Bank and the Korea Trade Promotion Corporation.

ARTICLE 20**Teachers**

- (1) Subject to paragraph (2) of this Article, an individual who visits one of the Contracting States for a period not exceeding two years for the purpose of teaching or engaging in research at a university, college, school or other similar educational institution which is recognised as non-profit seeking by the Government of that Contracting State, and who immediately before that visit was a resident of the other Contracting State, shall be taxable only in that other State on any remuneration for such teaching or research for a period not exceeding two years from the date he first visits that State for such purpose.
- (2) Where, under the provisions of this Convention taken together with the law in force in the other State, a teacher or researcher referred to in paragraph (1) of this Article is exempt from tax in that other State on his remuneration, or is entitled to a deduction equal to that remuneration in computing his liability to tax in that other State, such remuneration shall be taxable only in the first-mentioned State.

(3) The provisions of this Article shall apply to income from research only if such research is undertaken by the individual in the public interest and not primarily for the benefit of some other private person or persons.

ARTICLE 21

Students and apprentices

(1) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contract 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 first-mentioned State, provided that such payments arise from sources outside that State.

(2) In respect of grants, scholarships and remuneration from employment not covered by paragraph 1 of this Article, a student or business apprentice described in paragraph 1 of this Article shall, in addition, be entitled during such education or training to the same personal allowances, reliefs or reductions in respect of taxes as are available to residents of the Contracting State which he is visiting.

ARTICLE 22

Other income

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

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

(3) Where, by reason of a special relationship between the resident of a Contracting State referred to in paragraph (1) of this Article and some other person, or between both of them and some third person, the amount of the income referred to in paragraph (1) of this Article exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

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

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

(5) In the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of the provisions of paragraph (4) of this Article, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State.

ARTICLE 23

Elimination of double taxation

(1) Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against Korean tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Korea and which owns directly at least 10 per cent of the capital of the company paying the dividend, the credit shall take into account the United Kingdom tax payable by the former company in respect of its profits.

(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 (which shall not affect the general principle hereof):

(a) Korean tax payable under the laws of Korea and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Korea (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Korean tax is computed;

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

(3) For the purposes of paragraphs (1) and (2) of this Article, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

(4) Subject to the provisions of paragraph (5) of this Article, for the purpose of paragraph (2) of this Article, the term "Korean tax payable" shall be deemed to include any amount which would have been payable under Korean tax law for any

year but for an exemption or reduction of tax granted for that year or any part thereof under:

- (a) Articles 14, 16, 24, 25 and 28 of the Foreign Capital Inducement Law of Korea (so far as they were in force on and have not been modified since the date of signature of this Convention, or have been modified only in minor respects so as not to affect their general character), in any case where the induced capital, loan or technology in question is certified by the competent authority of Korea as being for the purpose of promoting new industrial, commercial, scientific or educational development in Korea; or
 - (b) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.
- (5) Relief from United Kingdom tax by virtue of paragraph (4) of this Article shall not be given:
- (a) where the profits, income or chargeable gains in respect of which tax would have been payable but for the exemption or reduction of tax granted under the provisions referred to in that paragraph arise or accrue after 31st December 2003; or
 - (b) in respect of income or profits from any source if that income or those profits arise in a period beginning more than ten years after the exemption or reduction referred to in that paragraph was first granted in respect of that source, whether that period began before or after the entry into force of this Convention.

ARTICLE 24

Limitation of relief

- (1) Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.
- (2) Where under Article 13 of this Convention gains may only be taxed in one of the Contracting States and under the law in force in that State a person is subject to tax in respect of those gains by reference to the amount thereof which is received in that State and not by reference to the full amount thereof, that Article shall apply only to so much of the gains as are taxed in that State.

ARTICLE 25

Non-discrimination

- (1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances, in particular with respect to residence, are or may be subjected.
- (2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.
- (3) Except where the provisions of paragraph (1) of Article 9, paragraph (8) or (10) of Article 11, paragraph (6) or (7) of Article 12, or paragraph (3) or (4) of Article 22 of this Convention apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible, under the same conditions as if they had been paid to a resident of the first-mentioned State.
- (4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.
- (5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.
- (6) The provisions of this Article shall apply to the taxes which are the subject of this Convention.

ARTICLE 26

Mutual agreement procedure

- (1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of Article 25 of this Convention, to that of the Contracting State of which he is a national.
- (2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the

case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

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

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

ARTICLE 27

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Article 1 of the Convention. Any information received by a Contracting State shall be treated as secret and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Convention. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practices of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State.
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy

ARTICLE 28

Members of diplomatic or permanent missions and consular posts

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

ARTICLE 29

Entry into force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Seoul as soon as possible.

(2) This Convention¹ shall enter into force after the expiration of thirty days following the date on which the instruments of ratification are exchanged and shall thereupon have effect:

(a) in Korea:

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1st January of the year following that in which this Convention enters into force; and
- (ii) in respect of other taxes, for the taxable year beginning on or after 1st January of the year following that in which this Convention enters into force;

(b) in the United Kingdom:

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Convention enters into force; and
- (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Convention enters into force.

(3) Subject to the provisions of paragraph (4) of this Article, the Convention between the Government of the Republic of Korea and the Government of the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed at Seoul on the 21st day of April 1977¹ (hereinafter referred to as "the 1977 Convention") shall terminate and cease to be effective from the date upon which this Convention has effect in respect of the taxes to which this Convention applies in accordance with the provisions of paragraph (2) of this Article.

(4) Where any provision of the 1977 Convention would have afforded any greater relief from tax than is due under this Convention, any such provision as aforesaid shall continue to have effect:

(a) in Korea, for the taxable year; and

(b) in the United Kingdom, for any year of assessment

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

ARTICLE 30

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic

¹United Nations, *Treaty Series*, vol. 1126, p. 101.

channels, by giving notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of the Convention. In such event, the Convention shall cease to have effect:

(a) in Korea:

- (i) in respect of taxes withheld at source, for amounts payable on or after 1st January in the year following that in which the notice of termination is given; and
- (ii) in respect of other taxes, for the taxable year beginning on or after 1st January in the year following that in which the notice of termination is given;

(b) in the United Kingdom:

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given; and
- (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at Seoul this 25th day of October 1996 in the Korean and English languages, both texts being equally authoritative.

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

T. G. HARRIS

For the Government
of the Republic of Korea:

LEE KI CHOO

EXCHANGE OF NOTES

I

*Her Majesty's Ambassador at Seoul
to the Acting Minister of Foreign Affairs for the Republic of Korea*

Seoul
25 October 1996

Excellency,

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

- (i) in relation to paragraph (2) of Article 8:

For the purposes of the Convention, when during an accounting period profits from rental or use, maintenance or rental referred to in paragraph (2) of Article 8 exceed in aggregate 20 per cent of total profits of an enterprise, such rental or such use, maintenance or rental shall not be regarded as incidental to the operation of ships or aircraft in international traffic.

- (ii) in relation to paragraph (3) of Article 10 and paragraph (5) of Article 11:

The United Kingdom legislation concerning thin capitalisation has been designed and is operated in conformity with the arm's-length principle reflected in Article 9 of the Convention. The special relationship provision in Article 11 of the Convention in conjunction with the definition of interest in that Article and the extended definition of dividends in Article 10 of the Convention ensures that interest re-characterised as a distribution under the thin capitalisation legislation is treated for the purposes of the Convention in the hands of the beneficial owner of the income as if it were a dividend.

- (iii) in relation to paragraph (9) of Article 11:

The paragraph applies to bodies such as pension funds and charities, and is concerned with transactions in interest bearing securities such as corporate bonds and government securities.

- (iv) in relation to paragraph (1) of Article 22:

The purpose of the exclusion from the paragraph for income paid out of trusts or the estates of deceased persons in the course of administration is to allow the recipient of the income the relief that would have been available to him under the provisions of the Convention had he received the income direct instead of through the trust or estate.

If the foregoing proposals are acceptable to the Government of the Republic of Korea, I have the honour to suggest that the present Note and Your Excellency's reply to that effect should be regarded as constituting an agreement between the two Governments

in this matter, which shall enter into force at the same time as the entry into force of this Convention .

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

T. G. HARRIS

II

*The Acting Minister of Foreign Affairs for the Republic of Korea
to Her Majesty's Ambassador at Seoul*

MINISTRY OF FOREIGN AFFAIRS
SEOUL

25 October 1996

Your Excellency,

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

[*See note I*]

The foregoing proposals being acceptable to the Government of the Republic of Korea, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of the Convention.¹

I take this opportunity to renew to Your Excellency the assurances of my highest consideration.

LEE KI-CHOO
