

UK/Brunei Double Taxation Arrangement

Signed 8 December 1950

Amended by arrangements signed on 4 March 1968, 12 December 1973 and 11 December 2012

Entered into force 8 December 1950

**Effective in UK from 6 April 1949 for surtax, from 1 April 1950 for profits tax,
and from 6 April 1950 for Income Tax**

Effective in Brunei from 1 January 1950

**Arrangement for the avoidance of double taxation and the prevention of fiscal
evasion with respect to taxes on income**

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Paragraph 1

(1) The taxes which are the subject of this arrangement are:

(a) In the UK:

the Income Tax (including surtax) and the profits tax (hereinafter referred to as 'UK tax')

(b) In Brunei:

the Income Tax (hereinafter referred to as 'Brunei tax')

(2) This arrangement shall also apply to any other taxes of a substantially similar character imposed in the UK or Brunei after this arrangement has come into force.

Paragraph 2

(1) In this arrangement, unless the context otherwise requires:

(a) the term 'UK' means Great Britain and Northern Ireland, including any area outside the territorial sea of the UK designated under its laws concerning the continental shelf and in accordance with international law as an area within which the rights of the UK with respect to the seabed and subsoil and their natural resources may be exercised.

(b) The term 'Brunei Darussalam' means the territory of Brunei Darussalam including its territorial sea, extending to the airspace above such territory, over which it exercises sovereignty, and the maritime area beyond its territorial sea, including seabed and subsoil, which has been or may hereafter be designated under the laws of Brunei Darussalam, as an area over which it exercises sovereign rights and jurisdiction in accordance with international law.

(c) The terms 'one of the territories' and 'the other territory' mean the UK or Brunei, as the context requires.

(d) The term 'tax' means UK tax or Brunei tax, as the context requires.

(e) The term 'person' includes any body of persons, corporate or not corporate.

(f) The term 'company' includes any body corporate.

(g) The terms 'resident of the UK' and 'resident of Brunei' mean respectively any person who is resident in the UK for the purposes of UK tax and not resident in Brunei for the purposes of Brunei tax and any person who is resident in Brunei for the purposes of Brunei tax and not resident in the UK for the purposes of UK tax; and a company shall be regarded as resident in the UK if its business is managed and controlled in the UK and as resident in Brunei if its business is managed and controlled in Brunei.

(h) The terms 'resident of one of the territories' and 'resident of the other territory' mean a person who is a resident of the UK or a person who is a resident of Brunei, as the context requires.

(i) The terms 'UK enterprise' and 'Brunei enterprise' mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the UK and an industrial or commercial enterprise or undertaking carried on by a resident of Brunei; and the terms 'enterprise of one of the territories' and 'enterprise of the other territory' mean a UK enterprise or a Brunei enterprise, as the context requires.

(j) The term 'industrial or commercial profits' includes rentals 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 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 regularly fills orders on its behalf.

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 business as such.

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.

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.

The term 'competent authority' means:

- (i) in the case of Brunei Darussalam, the Minister of Finance or his authorised representative
 - (ii) in the case of the UK, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative
- (2) 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.
- (3) In the application of the provisions of this arrangement by the UK or Brunei, any term not otherwise defined shall, unless the context otherwise requires, have the

meaning which it has under the laws of the UK, or, as the case may be, Brunei, relating to the taxes which are the subject of this arrangement.

Paragraph 3

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

(2) The industrial or commercial profits of a Brunei enterprise shall not be subject to UK tax unless the enterprise is engaged in trade or business in the UK through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the UK, 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 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.

Paragraph 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
- (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
- (c) in either case conditions are made or imposed between the 2 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.

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.

Paragraph 6

(1)

(a) Dividends paid by a company which is a resident of the UK to a resident of Brunei may be taxed in Brunei.

(b) Where a resident of Brunei is entitled to a tax credit in respect of such a dividend under subparagraph (2) of this paragraph tax may also be charged in the UK and according to the laws of the UK, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15%.

(c) Except as aforesaid dividends paid by a company which is a resident of the UK to a resident of Brunei who is subject to tax in Brunei on them shall be exempt from any tax in the UK which is chargeable on dividends.

(2) A resident of Brunei who receives dividends from a company which is a resident of the UK shall, subject to the provisions of subparagraph (3) of this paragraph and provided he is subject to tax in Brunei on the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the UK would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to UK tax.

(3) Subparagraph (2) of this paragraph shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10% of the voting power in the company paying the dividend. For the purpose of this subparagraph 2 companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends paid by a company resident in Brunei to a resident of the UK may be taxed in the UK. If the recipient of the dividends is subject to tax in the UK in respect thereof they shall be exempt from any tax in Brunei which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(5) The term 'dividends' as used in this paragraph means income from shares or other rights, not being debt claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the territory of which the company making the distribution is a resident and also includes any other item (other than royalties exempt from tax under the provisions of paragraph 7 of this arrangement) which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(6) If the recipient of a dividend is a company which owns 10% or more of the class of shares in respect of which the dividend is paid then subparagraphs (1) and (2) or as the case may be subparagraph (4) of this paragraph shall not apply to the dividend to the extent that it can have been paid only out of profits which the

company paying the dividend earned or other income which it received in a period ending 12 months or more before the relevant date. For the purposes of this subparagraph the term 'relevant date' means the date on which the beneficial owner of the dividend became the owner of 10% or more of the class of shares in question. Provided that this subparagraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this paragraph.

(7) The provisions of subparagraphs (1) and (2) or as the case may be subparagraph (4) of this paragraph shall not apply where a resident of one of the territories has in the other territory a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment.

(8) 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.

Paragraph 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.

Paragraph 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.

Paragraph 9

(1) An individual who is a resident of the UK shall be exempt from Brunei tax on profits or remuneration in respect of personal (including professional) services performed within Brunei in any year of assessment if:

(a) he is present within Brunei 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 UK,

(c) the profits or remuneration are subject to UK tax

(2) An individual who is a resident of Brunei shall be exempt from UK tax on profits or remuneration in respect of personal (including professional) services performed within the UK in any year of assessment if:

(a) he is present within the UK 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 Brunei, and

(c) the profits or remuneration are subject to Brunei 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.

Paragraph 10

(1) Any pension (other than a pension paid by the government of Brunei for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Brunei by an individual who is a resident of the UK and subject to UK tax in respect thereof, shall be exempt from Brunei tax.

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

Paragraph 11

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 by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

Paragraph 12

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

(a) Brunei tax payable under the laws of Brunei and in accordance with this arrangement, whether directly or by deduction, on profits or income from sources within Brunei shall be allowed as a credit against any UK tax computed by reference to the same profits or income by reference to which the Brunei tax is computed.

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of Brunei pays a dividend to a company resident in the UK which controls directly or indirectly at least 10% of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Brunei tax for which credit may be allowed under (a) of this subparagraph) the Brunei tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

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

(a) UK tax payable under the laws of the UK and in accordance with this arrangement, whether directly or by deduction, on profits or income from sources within the UK shall be allowed as a credit against any Brunei tax computed by reference to the same profits or income by reference to which the UK tax is computed.

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(b) Where a company which is a resident of the UK pays a dividend to a company resident in Brunei which controls directly or indirectly at least 10% of the voting power in the first-mentioned company, the credit shall take into account (in addition to any UK tax for which credit may be allowed under (a) of this subparagraph) the

UK tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(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 Brunei income tax is payable for a year for which this arrangement has effect in respect of any income in respect of which UK income tax is payable for a year prior to the year beginning on the 6 April, 1950, then:

(a) In the case of a person resident in the Brunei, the Brunei 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 UK Finance Act, 1920; and

(b) In the case of a person resident in the UK, the provisions of Section 39 of the Brunei Income Tax Enactment, 1949, shall apply for the purposes of the allowance of relief from the Brunei tax.

Paragraph 13

(1) The competent authorities of the territories shall exchange such information as is foreseeably relevant for carrying out the provisions of this arrangement or to the administration or enforcement of the domestic laws of the territories concerning taxes of every kind and description imposed on behalf of the territories, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this arrangement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against tax avoidance. The exchange of information is not restricted by paragraph 1 of the arrangement.

(2) Any information received under subparagraph (1) by a territory shall be treated as secret in the same manner as information obtained under the domestic laws of that territory 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 subparagraph (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. Notwithstanding the foregoing, information received by a territory may be used for other purposes when such information may be used for such other purposes under the laws of both territories and the competent authority of the supplying territory authorises such use.

(3) In no case shall the provisions of subparagraphs (1) and (2) be construed so as to impose on a territory the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other territory
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other territory
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy
- (d) to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or other admitted legal representative where such communications are:
 - (i) produced for the purposes of seeking or providing legal advice or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings

(4) If information is requested by a territory in accordance with this paragraph 13, the other territory shall use its information gathering measures to obtain the requested information, even though that other territory may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of subparagraph (3) but in no case shall such limitations be construed to permit a territory to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of subparagraph (3) be construed to permit a territory 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.'

Paragraph 14

This arrangement shall come into force on the date on which the last of all such things shall have been done in the UK and Brunei as are necessary to give the arrangement the force of law in the UK and Brunei respectively, and shall thereupon have effect:

(a) In the UK:

As respects income tax, for any year of assessment beginning on or after the 6 April, 1950; as respects surtax, for any year of assessment beginning on or after the 6 April, 1949; and as respects profits tax, in respect of the following profits:

(i) profits arising in any chargeable accounting period beginning on or after the 1 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 arrangement would be, chargeable for any year of assessment beginning on or after the 6 April, 1950

(b) In Brunei:

As respects income tax, for the year of assessment beginning on the first day of January, 1950, and subsequent years.

Paragraph 15

This arrangement shall continue in effect indefinitely but either of the governments may, on or before 30 June in any calendar year after the year 1951, give notice of termination to the other government and, in such event, this arrangement shall cease to be effective:

(a) In the UK:

As respects income tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the notice is given; as respects surtax, for any year of assessment beginning on or after the 6 April in the calendar year in which the notice is given; and 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 6 April in that next following calendar year

(b) In Brunei:

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

Protocol between the government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam and the government of the UK of Great Britain and Northern Ireland amending the arrangement between the government of Brunei and His Majesty's government for the avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income made in 1950, as amended by an arrangement in 1968 and a supplementary arrangement in 1973.

At the signing of the agreement amending the arrangement between the government of Brunei and His Majesty's government for the Avoidance of Double Taxation and the prevention of fiscal evasion with respect to taxes on income made in 1950, as

amended by an arrangement in 1968 and a supplementary arrangement in 1973, the authorised signatories hereto have agreed the following provision which shall form an integral part of the arrangement.

In relation to paragraph 13 of the arrangement, it is understood that subparagraph (5) of that paragraph does not require Brunei to supply information or documentation pertaining to investment policy and strategy decisions, operational decisions, internal appointments and resource allocations or details of the global investment holdings of:

- (i) the Autoriti Monetari Brunei Darussalam
- (ii) the Brunei Investment Agency
- (iii) the Employees Trust Fund Board
- (iv) the Supplemental Contributory Pension Board or
- (v) any local or statutory authority or statutory body exempt from tax in Brunei Darussalam

It is further understood that this list of institutions may be supplemented by agreement between the competent authorities.

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

Done in duplicate at London on 11 day of December 2012, in the Malay and English languages, both texts being equally authoritative. In case of any divergence in interpretation, the English text shall prevail.

For the government of
His Majesty the Sultan and
Yang Di-Pertuan of
Brunei Darussalam
Mohd Aziyan Abdullah

For the government of
The UK of
Great Britain and
Northern Ireland
David Gauke