

UK/MONSTERRAT DOUBLE TAXATION ARRANGEMENT
SIGNED 19 DECEMBER 1947
Amended by arrangements made 8 April 1968 and 7 December 2009

Entered into force 28 January 1948

Effective in United Kingdom from 6 April 1945 for surtax, from 6 April 1946
for income tax and from 1 January 1947 for profits tax

Effective in Montserrat from 1 January 1946

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**ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME**

Paragraph 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 Montserrat:

The income tax (hereinafter referred to as "Montserrat tax").

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Montserrat after this Arrangement has come into force.

Paragraph 2

(1) 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) [Deleted]

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Montserrat, as the context requires.

(d) The term "tax" means United Kingdom tax or Montserrat 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 United Kingdom" and "resident of Montserrat" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Montserrat for the purposes of Montserrat tax and any person who is resident in Montserrat for the purposes of Montserrat 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 Montserrat if its business is managed and controlled in Montserrat.

(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 Montserrat, as the context requires.

(i) The terms "United Kingdom enterprise" and "Montserrat 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 Montserrat; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Montserrat 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.

(l) the term "competent authority" means:

(i) in the case of the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;

(ii) in the case of Montserrat, the Comptroller of Inland Revenue.

(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 United Kingdom or Montserrat, 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, Montserrat, relating to the taxes which are the subject of this Arrangement.

Paragraph 3

- (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Montserrat tax unless the enterprise is engaged in trade or business in Montserrat through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Montserrat but only on so much of them as is attributable to that permanent establishment.
- (2) The industrial or commercial profits of a Montserrat 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. 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: Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of excess profits tax and profits tax in the case of inter-connected companies.
- (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, 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.

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) 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.

(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.

(3) If the recipient of a dividend is a company which owns 10 per cent. or more of the class of shares in respect of which the dividend is paid then sub-paragraph (1) 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 twelve months or more before the relevant date. For the purposes of this sub-paragraph the term 'relevant date' means the date on which the beneficial owner of the dividend became the owner of 10 per cent. or more of the class of shares in question.

Provided that this sub-paragraph 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.

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 connexion 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 United Kingdom shall be exempt from Montserrat tax on profits or remuneration in respect of personal (including professional) services performed within Montserrat in any year of assessment if:

(a) He is present within Montserrat for a period or periods not exceeding in the aggregate 183 days during that year, and

(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 Montserrat 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 is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

(b) The services are performed for or on behalf of a person resident in Montserrat, and

(c) The profits or remuneration are subject to Montserrat 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

Pensions, annuities and other similar remuneration paid to an individual who is a resident of one of the territories, other than pensions exempt from tax in that territory by virtue of paragraph 8(1) of this Arrangement, shall be taxable only in that territory.

Paragraph 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.

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

Paragraph 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 (which shall not affect the general principle hereof) --

(a) Montserrat tax payable under the laws of Montserrat and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Montserrat shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which Montserrat 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 Montserrat pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Montserrat tax for which credit may be allowed under (a) of this sub-paragraph) the Montserrat 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 Montserrat regarding the allowance as a credit against Montserrat tax of tax payable in a territory outside Montserrat (which shall not affect the general principle hereof) --

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Montserrat tax computed by reference to the same profits or income by reference to which the United Kingdom 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 United Kingdom pays a dividend to a company resident in Montserrat which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this sub-paragraph) the United Kingdom 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 Montserrat 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 Montserrat, the Montserrat 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 69 of the Montserrat Income Tax Ordinance, 1947, shall apply for the purposes of the allowance of relief from the Montserrat tax.

Paragraph 14

(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, 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 this Arrangement.

(2) Any information received under sub-paragraph 1 of this paragraph 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 sub-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. 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 sub-paragraphs 1 and 2 of this paragraph be construed so as to impose on a territory a requirement:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that territory 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 territory 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.

(4) If information is requested by a territory in accordance with this paragraph, 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 requirement in the preceding sentence is subject to the limitations of sub-paragraph 3 of this paragraph 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 sub-paragraph 3 of this paragraph 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 14A

(1) Where a resident of one of the territories considers that the actions of one or both of the territories result or will result for him in taxation not in accordance with the provisions of this Arrangement, he may, irrespective of the remedies provided by the domestic law of those territories, present his case to the competent authority of the territory of which he is a resident. 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 Arrangement or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

(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 territory, with a view to the avoidance of taxation which is not in accordance with this Arrangement. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the territories, except such limitations as apply for the purposes of giving effect to such an agreement.

(3) The competent authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Arrangement. They may also consult together for the elimination of double taxation in cases not provided for in the Arrangement.

(4) The competent authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of this paragraph.

Paragraph 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 Montserrat as are necessary to give the Arrangement the force of law in the United Kingdom and Montserrat respectively, and shall thereupon have effect:

(a) In the United Kingdom, as respects income tax for the year of assessment beginning on the 6th day of April 1946 and subsequent years; as respects surtax for the year of assessment beginning on the 6th day of April 1945 and subsequent years; and as respects profits tax for any chargeable accounting period beginning on or after the first day of January 1947 and for the unexpired portion of any chargeable accounting period current at that date;

(b) In Montserrat, as respects income tax for the year of assessment beginning on the first day of January 1946 and subsequent years.

Paragraph 16

This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30th day of June in any calendar year after the year 1947, give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective:

(a) In the United Kingdom 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; 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 as respects profits tax for any chargeable accounting period beginning on or after the first day of April 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 Montserrat, 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.