

UK/TUVALU DOUBLE TAXATION ARRANGEMENT
SIGNED 10 MAY 1950

Amended by arrangements made 4 March 1968 and 25 July 1974

Entered into force 10 May 1950

Effective in United Kingdom from 6 April 1948 for surtax, from 1 April 1949
for Profits tax and from 6 April 1949 for income tax

Effective in Gilbert and Ellice Islands from 1 January 1949

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Editor's Note: The text presented below incorporates changes made by protocols, exchanges of notes, and other similar agreements to show the text of the treaty as it currently reads. Only those subsequent agreements that amend the text of the treaty (rather than provide explanatory information), and that have entered into force have been incorporated into the text

Editor's Note: This arrangement currently applies to Kiribati and Tuvalu, successor states of the Gilbert and Ellice Islands.

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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 the Gilbert and Ellice Islands Colony:

The normal tax and the surtax (hereinafter referred to as "Colonial tax").

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or the Gilbert and Ellice Islands Colony 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) The term "the Colony" means the Gilbert and Ellice Islands Colony.

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

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

(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 the Colony, as the context requires.

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

(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 the Colony, 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, the Colony, 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 Colonial tax unless the enterprise is engaged in trade or business in the Colony through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the Colony but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Colonial 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.

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

(b) where a resident of the Colony is entitled to a tax credit in respect of such a dividend under sub-paragraph (2) of this Paragraph tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

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

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

(3). Sub-paragraph (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 per cent of the voting power in the company paying the dividend. For the purposes of this sub-paragraph two 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 which is a resident of the Colony to a resident of the United Kingdom who is subject to tax in the United Kingdom in respect thereof shall be exempt from any tax in the Colony 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 any other item 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 the company.

(6) 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-paragraphs (1) and (2) or, as the case may be, sub-paragraph (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 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.

(7) The provisions of sub-paragraphs (1) and (2) or, as the case may be, sub-paragraph (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 a business carried on through that permanent establishment. In such a case the provisions of Paragraph 3 shall apply.

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

(a) He is present within the Colony 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 the Colony 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 the Colony, and

(c) The profits or remuneration are subject to Colonial 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 the Colony for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the Colony by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Colonial tax.

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

(3) The term "annuity" means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

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) Colonial tax payable under the laws of the Colony and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the Colony shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Colonial 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 Colony 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 Colonial tax for which credit may be allowed under (a) of this sub-paragraph) the Colonial tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(1A) For the purposes of sub-paragraph (1) of this Paragraph, the term "Colonial tax payable" shall be deemed to include any amount which would have been payable as Colonial tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under;

(a) Section 10 of the Income Tax Ordinance, 1972, so far as it was in force on, and has not been modified since, the date when this Supplementary Arrangement came into force, or has been modified only in minor respects so as not to affect its general character; and except to the extent that it has the effect of exempting or relieving a source of income for a period in excess of 10 years; or

(b) any other provision which may subsequently be made granting exemption or reduction of tax which is agreed by the taxation authorities of the United Kingdom and the Colony 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.

(2) Subject to the provisions of the law of the Colony regarding the allowance as a credit against Colonial tax of tax payable in a territory outside the Colony (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 Colonial 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 the Colony 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 Colonial 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, 1949, then:

(a) In the case of a person resident in the Colony, the Colonial tax shall, for the purposes of sub-paragraph (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 11 (2) of the Gilbert and Ellice Islands Colony Income Tax Ordinance, 1947, shall apply for the purposes of the allowance of relief from the Colonial tax.

Paragraph 14

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

(2) As used in this paragraph, the term "taxation authorities" means the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom and the Treasurer or his authorised representative in the case of the Colony.

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

(a) In the United Kingdom:

As respects income tax, for any year of assessment beginning on or after the 6th April 1949; as respects surtax, for any year of assessment beginning on or after the 6th April, 1948; 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, 1949;

(ii) Profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

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

(b) In the Colony:

As respects normal tax and surtax, for the year of assessment beginning on the first day of January, 1949, and subsequent years.

Paragraph 16

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 1950, 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 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 6th 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 6th April in that next following calendar year;

(b) In the Colony:

As respects normal tax and surtax, 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.