

UK/VIETNAM DOUBLE TAXATION AGREEMENT

SIGNED 9 APRIL 1994

Entered into force 15 December 1994

Effective in United Kingdom from 1 April 1995 for corporation tax and  
from 6 April 1995 for income tax and capital gains tax

Effective in the Vietnam for withholding taxes paid on or after 1 January  
1995, arising on or after 1 January 1994

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**AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED  
KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE  
GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM 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 Socialist Republic of Vietnam;

Desiring to conclude an Agreement 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 Agreement shall apply to persons who are residents of one or both of the Contracting States.

## Article 2

### **Taxes covered**

(1) This Agreement shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State 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, taxes on the total amount of wages or salaries paid by enterprises as well as taxes on capital appreciation.

(3) The existing taxes to which the Agreement shall apply are:

(a) in the United Kingdom:

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

(hereinafter referred to as "United Kingdom tax");

(b) in Vietnam;

- (i) the income tax;
- (ii) the profits tax;
- (iii) the profit remittance tax;
- (iv) the foreign petroleum sub contractor tax;
- (v) the foreign contractor tax;

(hereinafter referred to as "Vietnamese tax").

(4) The Agreement shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Agreement 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 Agreement, unless the context otherwise requires:

(a) 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 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;

(b) the term "Vietnam" means the Socialist Republic of Vietnam; when used in a geographical sense, it means all its national territory, including its territorial sea and any area beyond its territorial sea, within which Vietnam, in accordance with international law, has sovereign rights of exploration for and exploitation of natural resources of the sea bed and its sub soil and superjacent water mass;

(c) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Vietnam, as the context requires;

(d) the term "person" includes an individual, a company and any body of persons, but does not include a partnership;

(e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(f) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" means respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(g) the term "national" means:

(i) 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;

(ii) in relation to Vietnam any individual possessing the nationality of Vietnam and any legal person, partnership and association deriving their status as such from the laws in force in Vietnam.

(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 the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and

(ii) in the case of Vietnam, the Minister of Finance or his authorised representative.

(2) As regards the application of the Agreement 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 Agreement applies.

## Article 4

### **Resident**

(1) For the purposes of this Agreement, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that Contracting State only if he derives 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 has no permanent home available to him in either Contracting 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 Contracting 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.



## Article 5

### **Permanent establishment**

(1) For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term "permanent establishment" includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than 183 days.

(4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub paragraphs (a) to (e) 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 whom paragraph (6) of this

Article applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph (4) 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.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## Article 6

### **Income from immovable property**

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State 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, 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 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 a reasonable allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) 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.

(5) Where profits include items of income or capital gains which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## Article 8

### **Shipping and air transport**

(1) Profits derived by 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) income 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) Where profits within paragraphs (1) or (2) of this Article are derived by an enterprise of a Contracting State from participation in a pool, a joint business or an international operating agency, the profits attributable to that enterprise shall be taxable only in the Contracting State of which it is a resident.

## 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, 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. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

## Article 10

### **Dividends**

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However such dividends may also be 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 and subject to tax in respect of the dividends in that other Contracting State the tax so charged shall not exceed:

(a) 7 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 50 per cent of the voting power in the company paying the dividends or has invested at least £7 million in the share capital of the company paying the dividends;

(b) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which controls, directly or indirectly, at least 25 per cent but less than 50 per cent of the voting power in the company paying the dividends;

(c) 15 per cent of the gross amount of the dividends in all other cases.

(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 assimilated to income from shares by the taxation laws of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under Article 11 of this Agreement) which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(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 of this Agreement, 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 Contracting 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 undistributed profits, even if the dividends paid or the undistributed profit consist wholly or partly of profits or income arising in that other 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 and subject to tax in respect of the interest in that other Contracting State the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) 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. The term "interest" shall not include any item which is treated as a distribution under Article 10 of this Agreement.

(4) 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 cases the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

(5) 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 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.

(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 interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount of interest. 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 Agreement.

(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 debt claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.



(8) Notwithstanding the provisions of paragraph (2) of this Article, interest arising in a Contracting State shall be exempt from tax in that State if it is derived and beneficially owned by the Government of the other Contracting State or a local authority thereof or any agency or instrumentality of that Government or local authority.

(9) Notwithstanding the provisions of Article 7 of this Agreement and of paragraph (2) of this Article, interest arising in Vietnam which is paid to and beneficially owned by a resident of the United Kingdom shall be exempt from tax in Vietnam 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.

## 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 beneficial owner of the royalties is a resident of the other Contracting State and subject to tax in respect of the royalties in that State, the tax so charged, subject to the understanding recorded in the Exchange of Notes between the Contracting States when this Agreement was signed, shall not exceed 10 per cent of the gross amount of the royalties.

(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 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 of this Agreement, 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, or a local authority thereof, 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, having regard to the use, right, or information for which they are paid, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount of royalties. 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 Agreement.

(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.

## 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 of this Agreement 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 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 sub paragraph (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 that other State.
- (4) Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic by an enterprise of a Contracting State 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 provided that those gains are subject to tax in that Contracting State.
- (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 and 20 of this Agreement, 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 within any period of twelve months; 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 Agreement, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

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



## Article 18

### **Pensions**

(1) Subject to the provisions of paragraph (2) of Article 19 of this Agreement, pensions and other similar remuneration paid in consideration of past employment to an individual resident of a Contracting State and any annuity paid to such an individual resident shall be taxable only in that State.

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

## Article 19

### **Government service**

(1) (a) 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) Notwithstanding the provisions of sub paragraph (a) of this paragraph, such 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) Notwithstanding the provisions of sub paragraph (a) of this paragraph, such pension shall be taxable only in the other Contracting State if the individual is a resident of and a national of that State.

(3) The provisions of Articles 15, 16 and 18 of this Agreement shall apply to remuneration and pensions 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.

## Article 20

### **Students**

Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that first mentioned State, provided that such payments arise from sources outside that State.

## Article 21

### **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 Agreement, 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 the income, other than income from immovable property as defined in paragraph (2) of Article 6 of this Agreement, 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, as the case may be, shall apply.

## Article 22

### **Elimination of double taxation**

(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) Vietnamese tax payable under the laws of Vietnam and in accordance with this Agreement, whether directly or by deduction, on profits, income or chargeable gains from sources within Vietnam (excluding in the case of a dividend, tax payable in Vietnam 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 Vietnamese tax is computed;

(b) in the case of a dividend paid by a company which is a resident of Vietnam 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 Vietnamese tax for which credit may be allowed under the provisions of sub paragraph (a) of this paragraph) the Vietnamese tax payable by the company in respect of the profits out of which such dividend is paid.

(2) Subject to the provisions of the law of Vietnam from time to time in force which relate to the allowance of a credit against Vietnamese tax of tax paid in a country outside Vietnam (which shall not affect the general principle of this Article), tax paid under the law of the United Kingdom and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Vietnam from sources in the United Kingdom shall be allowed as a credit against Vietnamese tax payable in respect of that income. The credit shall not, however, exceed the Vietnamese tax as computed by reference to the same income before the credit is given.

(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 Agreement shall be deemed to arise from sources in that other Contracting State.

(4) Subject to paragraphs (5) and (6) of this Article, for the purpose of paragraph (1) of this Article, the term "Vietnamese tax payable" shall be deemed to include any amount which would have been payable as Vietnamese tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under any of the following provisions of Vietnamese law:

(a) Articles 26, 27, 28, 32 or 33 of the Law on Foreign Investment in Vietnam 1987 and connected regulations as amended, so far as they were in force on, and have not been modified since, the date of signature of this Agreement, or

have been modified only in minor respects so as not to affect their general character: and provided always that the competent authority of Vietnam has certified that any such exemption from or reduction of Vietnamese tax given under these Articles has been granted in order to promote industrial, commercial, scientific, educational or other development in Vietnam and the competent authority of the United Kingdom has accepted that such exemption or reduction has been granted for such purpose; or

(b) any other provision to promote economic development in Vietnam, which may subsequently be introduced, granting exemption from or reduction of Vietnamese 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: and subject always to certification and acceptance having taken place as provided for in sub paragraph (a) of this paragraph.

(5) Relief from United Kingdom tax by virtue of paragraph (4) of this Article shall be given for a period of ten years only, beginning with the date on which this Agreement entered into force.

(6) The period referred to in paragraph (5) of this Article may be extended by agreement between the Contracting States.

## Article 23

### **Non discrimination**

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances 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, provided that this paragraph shall not prevent that other Contracting State from imposing on the profits attributable to a permanent establishment in that Contracting State of a company which is a resident of the first mentioned Contracting State further tax not exceeding 10% of those profits. Moreover this paragraph shall not apply to the taxation of permanent establishments in Vietnam of United Kingdom enterprises in respect of oil exploration or production activities or in respect of activities which in the case of Vietnamese enterprises are subject to tax under the Law on Agriculture Land Use Tax.

(3) Except where the provisions of paragraph (1) of Article 9, paragraph (6) of Article 11 or paragraph (6) of Article 12 of this Agreement apply, and subject to the provisions of paragraph (7) of Article 11 or paragraph (7) of Article 12 of this Agreement, 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 only to the taxes which are the subject of this Agreement.

## Article 24

### **Mutual agreement procedure**

(1) Where a resident of a Contracting State considers that the actions of the competent authority of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, 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.

(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 Agreement.

(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 Agreement.

(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 25

### **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 Agreement or of the domestic laws of the Contracting States concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to this Agreement, in particular, to prevent fraud and to facilitate the administration of statutory provisions against legal avoidance. The exchange of information is not restricted by Article 1 of this Agreement. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) 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 Agreement. 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 the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with the law and administrative practice prevailing in either Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of either 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 26

### **Members of diplomatic or permanent missions and consular posts**

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

## Article 27

### **Entry into force**

Each of the Contracting States shall notify to the other through the diplomatic channel the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) 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 Agreement enters into force;

(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 Agreement enters into force;

(b) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amounts paid on or after 1st January following the calendar year in which the Agreement enters into force;

(ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year in which the Agreement enters into force.

## Article 28

### Termination

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement, through the diplomatic channel, 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 Agreement. In such event, the Agreement shall cease to have effect:

(a) 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;

(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;

(b) in Vietnam:

(i) in respect of taxes withheld at source, in relation to taxable amounts paid on or after 1st January following the calendar year in which the notice is given;

(ii) in respect of other Vietnamese taxes, in relation to income, profits or gains arising in the calendar year in which the notice given.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Hanoi this 9th day of April 1994 in the English and Vietnamese languages, both texts being equally authoritative.

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

For the Government of the of  
Socialist Republic of Vietnam:

*Alastair Goodlad*  
Minister of State for Foreign and  
Commonwealth Affairs

*Ho Te*  
Minister of Finance

## EXCHANGE OF NOTES

Mr Alastair Goodlad  
Minister of State for Foreign and Commonwealth Affairs  
Foreign and Commonwealth Office  
LONDON

9th April 1994

Excellency,

I have the honour to refer to the Agreement between the Government of the Socialist Republic of Vietnam 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 which has been signed today and to propose on behalf of the Government of the Socialist Republic of Vietnam:

### *in relation to Article 12*

If, before or after the entry into force of this Agreement, Vietnam concludes an Agreement for the Avoidance of double taxation with any other member State of the Organisation for Economic Cooperation and Development and, under the provisions of that Agreement Vietnam may tax royalties arising in Vietnam and paid to a resident of that State but the tax charged is not to exceed a lower percentage of the gross royalties than that specified in paragraph (2) of Article 12, then:

where that lower percentage applies, subject to the same exceptions as are provided in Article 12, to income of the same description as that to which paragraph (2) of Article 12 applies, the lower percentage shall be substituted for that specified in paragraph (2) of Article 12 with effect from the date of entry into force of that Agreement or of this Agreement, whichever is the later;

### *in relation to Article 22*

If, before or after the entry into force of this Agreement, Vietnam introduces a withholding tax on dividends or interest that the United Kingdom competent authority will undertake that a provision to promote economic development in Vietnam which grants an exemption from or reduction of that Vietnamese tax will fall to be considered as of a substantially similar character within the meaning of paragraph (4)(b) of Article 22;

*in relation to Article 23*

For so long as Vietnam continues to grant to investors licences under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subject, the imposition of such taxation shall not be regarded as breaching the terms of paragraph (2) of Article 23.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland 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.

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

For the Government of the Socialist Republic of Vietnam

*Ho Te*  
Minister of Finance

His Excellency Mr Ho Te  
Minister of Finance  
8 Phan Huy Chu  
Hanoi

9th April 1994

Excellency,

In am in receipt of your Note dated 9th April which states as follows:

“I have the honour to refer to the Agreement between the Government of the Socialist Republic of Vietnam 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 which has been signed today and to propose on behalf of the Government of the Socialist Republic of Vietnam:

*in relation to Article 12*

If, before or after the entry into force of this Agreement, Vietnam

concludes an Agreement for the avoidance of double taxation with any other member State of the Organisation for Economic Cooperation and Development and, under the provisions of that Agreement Vietnam may tax royalties arising in Vietnam and paid to a resident of that State but the tax charged is not to exceed a lower percentage of the gross royalties than that specified in paragraph (2) of Article 12, then:

where that lower percentage applies, subject to the same exceptions as are provided in Article 12, to income of the same description as that to which paragraph (2) of Article 12 applies, the lower percentage shall be substituted for that specified in paragraph (2) of Article 12 with effect from the date of entry into force of that Agreement or of this Agreement, whichever is the later;

*in relation to Article 22*

If, before or after the entry into force of this Agreement, Vietnam introduces a withholding tax on dividends or interest that the United Kingdom competent authority will undertake that a provision to promote economic development in Vietnam which grants an exemption from or reduction of that Vietnamese tax will fall to be considered as of a substantially similar character within the meaning of paragraph (4)(b) of Article 22;

*in relation to Article 23*

For so long as Vietnam continues to grant to investors licences under the Law on Foreign Investment in Vietnam, which specify the taxation to which the investor shall be subject, the imposition of such taxation shall not be regarded as breaching the terms of paragraph (2) of Article 23."

The foregoing proposals being acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, 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 Agreement.

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

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

*Alastair Goodlad*  
Minister of State for Foreign and Commonwealth Affairs