
◆ DOUBLE TAXATION AGREEMENTS

Revised to 1st January 1999

*Made by the Minister of Finance pursuant to section 106
of the Income Tax Act 1974 (Cap. 201)*

CHECK JAPAN **

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◆ **AUSTRALIA**

LN 113/1990 [FRGS No. 43 18th December 1990]

**INCOME TAX ACT
(CHAPTER 201)**

THE Government of Fiji has made arrangements with the Government of Australia with a view to the prevention of the levying under the laws of Fiji and of Australia of income tax in respect of the same income and rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of Fiji and of Australia.

The arrangements so made are embodied in a Convention concluded on 15 October, 1990, a copy of which is set out in the Schedule.

Dated this 10th day December 1990.

JOSEVATA N. KAMIKAMICA
Minister of Finance & Economic Planning

SCHEDULE

**AGREEMENT BETWEEN AUSTRALIA AND FIJI FOR THE AVOIDANCE OF
DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH
RESPECT TO TAXES ON INCOME**

Fiji and Australia

DESIRING to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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) The existing taxes to which this Agreement shall apply are:
- (a) in Australia:
the income tax, and the resource rent tax in respect of offshore projects relating to exploration for or exploitation of petroleum resources, imposed under the federal law of the Commonwealth of Australia; and
- (b) in Fiji:
the income tax (including basic tax and normal tax, the non-resident dividend withholding tax, the interest withholding tax, the royalty withholding tax and the dividend tax, and the land sales tax.
- (2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed under the federal law of Fiji 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 the laws of their respective States relating to the taxes to which the Agreement applies, within a reasonable period of time after those changes.

ARTICLE 3

General Definitions

- (1) In this Agreement, unless the context otherwise requires:
- (a) the term “Australia”, when used in a geographical sense, excludes all external territories other than:
- (i) the Territory of Norfolk Island,
 - (ii) the Territory of Christmas Island,
 - (iii) the Territory of Cocos (Keeling) Islands;
 - (iv) the Territory of Ashmore and Cartier Islands,
 - (v) the Territory of Heard Island and McDonald Islands; and
 - (vi) the Coral Sea Islands Territory,
- and includes any area adjacent to the territorial limits of Australia (including the Territories specified in this subparagraph) in respect of which there is for the time being in force, consistently with international law, a law of Australia dealing with the exploitation of any of the natural resources of the seabed and subsoil of the continental shelf;
- (b) the term “Fiji” means the Islands of Fiji, including the Island of Rotuma and its dependencies, and includes all areas of water which consistently with international law, have been, or may after the date of this Agreement be, designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the seabed and its subsoil and the natural resources thereof;
- (c) the terms “Contracting State”, “one of the Contracting States” and “other Contracting State” mean Australia or Fiji, as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a company for tax purposes,

- (f) the terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean an enterprise carried on by a resident of Australia or an enterprise carried on by a resident of Fiji, as the context requires;
- (g) the term “tax” means Australian tax or Fiji tax, as the context requires;
- (h) the term “Australian tax” means tax imposed by Australia, being tax to which this Agreement applies by virtue of **Article 2**;
- (i) the term “Fiji tax” means tax imposed by Fiji, being tax to which this Agreement applies by virtue of **Article 2**; and
- (j) the term “competent authority” means, in the case of Australia, the Commissioner of Taxation or an authorised representative of the Commissioner and, in the case of Fiji, the Commissioner of Inland Revenue or an authorised representative of the Commissioner.

(2) In this Agreement, the terms “Australian tax” and “Fiji tax” do not include any penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of **Article 2**.

(3) In the application of the provisions of this Agreement by a Contracting State, any term not defined in this Agreement shall, unless the context otherwise requires have the meaning which it has under the laws of that State from time to time in force relating to the taxes to which this Agreement applies by virtue of **Article 2**.

(4) In determining, for the purposes of **Article 10, 11 or 12**, whether dividends, interest or royalties are beneficially owned by a resident of one of the Contracting States, dividends, interest or royalties derived by a trustee is subject to tax in that State shall be treated as being beneficially owned by that trustee to the extent to which, as at the end of the year of income, residents of that State had any interest, whether vested or contingent, in that income and no person other than residents of that State could, by the exercise of a power conferred on any person, obtain such an interest.

ARTICLE 4

Residence

- (1) For the purposes of this Agreement, a person is a resident of one of the Contracting States:
 - (a) in the case of Australia, subject to the provisions of paragraph (2), if the person is a resident of Australia for the purposes of Australian tax; and
 - (b) in the case of Fiji, if the person is a resident of Fiji for the purposes of Fiji tax.
- (2) A person is not a resident of a Contracting State for the purposes of this Agreement if the person is liable to tax in that State in respect only of income from sources in that State.
- (3) Where by reason of the preceding provisions of this Article an individual is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:
 - (a) the person shall be deemed to be a resident solely of the Contracting State in which a permanent home is available to the person;
 - (b) if a permanent home is available to the person in both Contracting States, or in neither of them, the person shall be deemed to be a resident solely of the Contracting State in which the person has an habitual abode, and

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- (c) if the person has an habitual abode in both Contracting States or does not have an habitual abode in either of them, the person shall be deemed to be a resident solely of the Contracting State with which the person's personal and economic relations are the closer.
- (4) In determining for the purposes of paragraph (3) the Contracting State with which an individual's personal and economic relations are the closer, the matters to which regard may be had shall include the citizenship of the individual.
- (5) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then the person's status shall be determined as follows:
- (a) it shall be deemed to be resident of the Contracting State in which it is incorporated or otherwise constituted; and
- (b) if it is not incorporated or otherwise constituted in either of the Contracting States, 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,
- (g) an agricultural, pastoral or forestry property, and
- (h) a building site or construction, installation or assembly project which exists for more than six months.
- (3) An enterprise shall not be deemed to have a permanent establishment merely by reason of:
- (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 fixed place of business solely for the purpose of purchasing goods or merchandise or for collecting information, for the enterprise; or
- (d) the maintenance of a fixed place of business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.
- (4) An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:

- (a) it carries on supervisory activities in that State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;
 - (b) substantial equipment is being used or installed in that State by, for or under contract with the enterprise; or
 - (c) it furnishes services, including consultancy services, through employees or other personnel engaged by it for such purpose, but only where activities of that nature continue within that State for a period or periods aggregating more than six months within any twelve month period.
- (5) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State – other than an agent of an independent status to whom paragraph (6) applies – shall be deemed to be a permanent establishment of that enterprise in the first mentioned State if:
- (a) the person has, and habitually exercises in that State, an authority to conclude contracts on behalf of the enterprise, unless the person’s activities are limited to the purchase of goods or merchandise for the enterprise;
 - (b) there is maintained in that State a stock of goods or merchandise belonging to the enterprise from which the person habitually fills orders on behalf of the enterprise; or
 - (c) in so acting, the person manufactures or processes in that Contracting State for the enterprise goods or merchandise belonging to the enterprise.
- (6) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a person who is a broker, general commission agent or any other agent of an independent status and is acting in the ordinary course of the person’s business as such a broker or agent.
- (7) The fact that a company which is a resident of one of the Contracting States 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 make either company a permanent establishment of the other.
- (8) The principles set forth in the preceding paragraphs of this Article shall be applied in determining for the purposes of paragraph (5) of **Article 11** and paragraph (5) of **Article 12** whether there is a permanent establishment outside both Contracting States, and whether an enterprise, not being an enterprise of one of the Contracting States, has a permanent establishment in one of the Contracting States.

ARTICLE 6

Income from Real Property

- (1) Income from real property may be taxed in the Contracting State in which the real property is situated.
- (2) In this Article, the term “real property”, in relation to one of the Contracting States has the meaning which it has under the laws of that State and also includes:
- (a) a lease of land and any other interest in or over land whether improved or not; and
 - (b) a right to receive variable or fixed payments either as consideration for the exploitation of or the right to explore for or exploit, or in respect of the exploitation of standing timber or any mineral, oil or gas deposits, quarries or other places of extraction or exploitation of natural resources.

(3) Any interest or right referred to in paragraph (2) shall be regarded as situated where the land, standing timber, mineral, oil or gas deposits, quarries or natural resources, as the case may be, are situated or where the exploration may take place.

(4) The provisions of paragraphs (1) and (3) shall also apply to income from real property of an enterprise and to income from real property used for the performance of professional services.

ARTICLE 7

Business Profits

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

- (a) that permanent establishment; or
- (b) sales within that other State of goods or merchandise of the same or a similar kind as those sold, or other business activities of the same or a similar kind as those carried on, through that permanent establishment, if the sale or the business activities had been made or carried on in that way with a view to avoiding taxation in that other State.

(2) Subject to the provisions of paragraph (3), where an enterprise of one of the Contracting States carries on business in the other contracting States 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 or with other enterprises with which it deals.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise, being expenses which are incurred for the purposes of the permanent establishment (including executive and general administrative expenses so incurred) and which would be deductible if the permanent establishment were an independent entity which paid those expenses, whether incurred 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) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise. Nothing in this Article shall affect the application of any law of that Contracting State relating to the determination of the tax liability of a person, provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(6) Where profits include items of income 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.

(7) Nothing in this Article shall affect the operation of any law of a Contracting State relating to taxation of profits from insurance with non-residents provided that, if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (otherwise than in minor respects so as not to affect its general character), the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

(8) Where:

- (a) a resident of a Contracting State is beneficially entitled, whether directly or through one or more interposed trust estates, to a share of the business profits of an enterprise carried on in the other Contracting State by the trustee of a trust estate other than a trust estate which is treated as a company for tax purposes; and
- (b) in relation to that enterprise, that trustee would, in accordance with the principles of **Article 5**, have a permanent establishment in Australia,

the enterprise carried on by the trustee shall be deemed to be a business carried on in the other State by that resident through a permanent establishment situated therein and that share of business profits shall be attributed to that permanent establishment.

ARTICLE 8

Shipping and Air Transport

(1) Profits from the operation of ships or aircraft derived by a resident of one of the Contracting States shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1), such profits may be taxed in the other Contracting State where they are profits from operations of ships or aircraft confined solely to places in that other State.

(3) The provisions of paragraphs (1) and (2) shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of one of the Contracting States through participation in a pool service, in a joint transport operating organisation or in an international operating agency.

(4) For the purposes of this Article, profits derived from the carriage by ships or aircraft of passengers, livestock, mail, goods or merchandise shipped in a Contracting State for discharge at another place in that State shall be treated as profits from operations of ships or aircraft confined solely to places in that State.

ARTICLE 9

Associated Enterprises

(1) Where:

- (a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

and in either case conditions operate between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing wholly independently with one another, then any profits which, but for those conditions, might have been expected to accrue 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.

(2) If the information available to the competent authority of a Contracting State is inadequate to determine the profits to be attributed to an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person,

provided that that law shall be applied, so far as the information available to the competent authority permits, in accordance with the principles of this Article.

(3) Notwithstanding the provisions of this Article, an enterprise of one of the Contracting States may be taxed by that State as if this Article had not come into effect but, so far as it is practicable to do so, in accordance with the principles of this Article.

(4) Where profits on which an enterprise of one of the Contracting States has been charged to tax in that State are also included, by virtue of paragraph (1), (2) or (3), in the profits of an enterprise of the other Contracting State and taxed accordingly, and the profits so included are profits which might have been expected to have accrued to that enterprise of the other State if the conditions operative between the enterprises had been those which might have been expected to have operated between independent enterprises dealing wholly independently with one another, then the firstmentioned State shall make an appropriate adjustment to the amount of tax charged on those profits in the firstmentioned State. In determining such an adjustment due regard shall be had to the other provisions of this Agreement and for this purpose the competent authorities of the Contracting States shall if necessary consult each other.

(5) The provisions of paragraph (4) relating to an appropriate adjustment are not applicable after the expiration of six years from the end of the year of assessment of year of tax in respect of which a Contracting State has charged to tax the profits to which the adjustment would relate.

ARTICLE 10

Dividends

(1) Dividends paid by a company which is a resident of one of the Contracting States for the purposes of its tax, being dividends to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such dividends may be taxed in the Contracting State of which the company paying the dividends is a resident for the purposes of its tax, and according to the law of that State, but the tax so charged shall not exceed 20 per cent of the gross amount of the dividends.

(3) The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the law, relating to tax, of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the dividends, being a resident of one of the Contracting States, 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 a case, the provisions of **Article 7** or **Article 14**, as the case may be, shall apply.

(5) Dividends paid by a company which is a resident of one of the Contracting States, being dividends to which a person who is not a resident of the other contracting State is beneficially entitled, shall be exempt from tax in that other State except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment of fixed base situated in that other State. Provided that this paragraph shall not apply in relation to dividends paid by any company which is a resident of Australia for the purposes of Australian tax and which is also a resident of Fiji for the purposes of Fiji tax.

(6) Nothing in this Agreement shall be construed as preventing one of the Contracting States from imposing, on the income of a company which is a resident of the other Contracting State, tax in addition to the taxes referred to in **Article 2** in relation to the firstmentioned State, provided that any such additional tax shall not exceed 20 per cent of the amount by which the taxable income of the firstmentioned company of a year of income exceeds the tax payable on that taxable income to the firstmentioned State. Any tax payable to one of the Contracting State on the undistributed profits of a company which is a resident of the other Contracting State shall be calculated as if that company were not liable to the additional tax referred to in this paragraph and had paid dividends of such amount that tax equal to the amount of the additional tax would have been payable on the dividends in accordance with paragraph (2).

ARTICLE 11

Interest

(1) Interest arising in one of the Contracting States, being interest to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such interest may be taxed in the Contracting State in which it arises, and according to the law of that State, but the tax so charged shall not exceed 10 percent of the gross amount of the interest.

(3) The term “interest” in this Article includes interest from Government securities or from bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and interest from any other form of indebtedness as well as all other income assimilated to income from money lent by the law, relating to tax, of the Contracting State in which the income arises.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the interest, being a resident of one of the Contracting States, carries on business in the other Contracting State, in which the interest arises, through a permanent establishment situated therein, or performs in that other contracting State independent personal services from a fixed base situated therein, and the indebtedness in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of **Article 7** or **Article 14**, 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 or a political subdivision or local authority of that State or a person who is a resident of that State for the purposes of its tax. Where, however the person paying the interest, whether the person is a resident of one of the Contracting States or not has in one of the Contracting States or outside both Contracting States a permanent establishment of fixed base, in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such armament 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, owing to a special relationship between the payer and the person beneficially entitled to the interest, or between both of them and some other person, the amount of the interest paid, having regard to the indebtedness for which it is paid, exceeds the amount which might have been expected to have been agreed upon by the payer and the person so entitled in the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the interest paid shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 12

Royalties

(1) Royalties arising in one of the Contracting States, being royalties to which a resident of the other Contracting State is beneficially entitled, may be taxed in that other State.

(2) Such royalties may be taxed in the Contracting State in which they arise, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

(3) The term “royalties” in this Article means payments or credits, whether periodical or not and however, described or computed, to the extent to which they are made as consideration for:

- (a) the use of, or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial (including agricultural), commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial (including agricultural) or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right of the kinds mentioned in subparagraph (a), any such equipment as is mentioned in subparagraph (b) or any such knowledge or information as is mentioned in subparagraph (c);
- (e) the use of, or the right to use:
 - (i) motion picture films;
 - (ii) films or video tapes for use in connection with television; or
 - (iii) tapes for use in connection with radio broadcasting;
- (f) the supply by a resident of one of the Contracting States of management services in the other Contracting State; or
- (g) total or partial forbearance in respect of the use of a property or right referred to in this paragraph.

(4) The provisions of paragraphs (1) and (2) shall not apply if the person beneficially entitled to the royalties, being a resident of one of the Contracting States, 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 or credited is effectively connected with such permanent establishment or fixed base. In such a case, the provisions of **Article 7** or **Article 14**, as the case may be, shall apply.

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

(6) Where, owing to a special relationship between the payer and the person beneficially entitled to the royalties or between both of them and some other person, the amount of the royalties paid or

credited, having regard to what they are paid or expected to have been agreed upon by the payer and the person so entitled in, the absence of such relationship, the provisions of this Article shall apply only to the lastmentioned amount. In that case, the excess part of the amount of the royalties paid or credited shall remain taxable according to the law, relating to tax, of each Contracting State, but subject to the other provisions of this Agreement.

ARTICLE 13

Alienation of Property

(1) Income, profits or gains derived by a resident of one of the Contracting States from the alienation of real property as defined in **Article 6** and, as provided in that Article, situated in the other Contracting State may be taxed in that other State.

(2) Income, profits or gains from the alienation of property, other than real property as defined in **Article 6**, that forms part of the business property of a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State, including income, profits or gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(3) Income, profits or gains from the alienation of ships or aircraft operated in international traffic, or of property other than real property as defined in **Article 6** pertaining to the operation of those ships or aircraft, shall be taxable only in the Contracting State of which the enterprise which operated those ships or aircraft is a resident.

(4) Income, profits or gains derived by a resident of one of the Contracting States from the alienation of shares or comparable interests in a company, the assets of which consist wholly or principally or real property as defined in **Article 6** in the other Contracting State, may be taxed in that other State.

(5) Nothing in this Agreement affects the application of a law of a Contracting State relating to the taxation of profits or gains of a capital nature derived from the alienation of property other than that to which any of paragraphs (1), (2), (3) and (4) apply.

ARTICLE 14

Independent Personal Services

(1) Income derived by an individual who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However if such an individual:

- (a) has a fixed base regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities;
- (b) in a year of income, stays in that other Contracting State for a period or periods aggregating 183 days or more for the purpose of performing the individual's activities; or
- (c) in a year of income, derives gross remuneration (including expenses reimbursed to or borne on behalf of the individual or the value of any benefit provided in connection with those services or activities) in respect of the individual's activities in that other State, that is paid by a resident of that other State or is deductible in determining taxable profits of a permanent establishment or a fixed base situated in that other State and that exceeds eight thousand Australian dollars or its equivalent in Fijian dollar,

so much of the income derived by the individual as is attributable to activities so performed by be taxed in that other State.

(2) The Treasurer of Australia and the Minister of Finance of Fiji may agree in letters exchanged for the purpose to variations in the amount specified in subparagraph (1)(c) and any variations so agreed shall have effect according to the tenor of the letters.

(3) The term “professional services” includes services performed in the exercise of independent scientific, literary, artistic, educational or teaching activities, as well as in the exercise of independent activities, as well as in the exercise of 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**, salaries, wages and other similar remuneration derived by an individual who is a resident of one of the Contracting States 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 from that exercise may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by an individual who is a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be taxable only in the firstmentioned State if:

- (a) the recipient is present in that other State for a period or periods not exceeding in the aggregate 90 days in the year of income of that other State; and
- (b) the remuneration is, or upon the application of this Article will be, subject to tax in the firstmentioned State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by a resident of one of the Contracting States may be taxed in that State.

ARTICLE 16

Director's Fees

Director's fees and similar payments derived by a resident of one of the Contracting States 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

Entertainers

(1) Notwithstanding the provisions of **Articles 14 and 15**, income derived by entertainers (such as theatrical, motion picture, radio or television artistes and musicians and athletes) from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

(2) Where income in respect of the personal activities of an entertainer as such accrues not to that entertainer but to another person, that income may, notwithstanding the provisions of **Articles 7, 14 and 15**, be taxed in the Contracting State in which the activities of the entertainer are exercised.

(3) The provisions of paragraphs (1) and (2) shall not apply to income derived from activities exercised in one of the Contracting States by entertainers if the visit to that State is wholly or substantially supported by public funds of the other Contracting State, or a political subdivision, local authority or statutory body thereof.

ARTICLE 18

Pensions and Annuities

(1) Pensions (other than pensions to which **Article 19** applies) and annuities paid to a resident of one of the Contracting States 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.

(3) Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable only in the firstmentioned State.

ARTICLE 19

Government Service

(1) Remuneration (including a pension or annuity) paid by one of the Contracting States or a political subdivision or local authority of that State to any individual in respect of services rendered in the discharge of governmental functions shall be taxable only in that State. However, such remuneration, not being a pension or annuity, shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient is a resident of that other State who:

- (a) is a citizen of that State; or
- (b) did not become a resident of that State solely for the purpose of performing the services.

(2) The provisions of paragraph (1) shall not apply to remuneration, including a pension or annuity, in respect of services rendered in connection with any trade or business carried on by one of the Contracting States or a political subdivision or local authority of that State. In such a case, the provisions of **Article 15, 16 or 18**, as the case may be, shall apply.

ARTICLE 20

Professors and Teachers

(1) Remuneration which a professor or teacher who is a resident of one of the Contracting States and who visits the other Contracting States for a period not exceeding two years for the purpose of teaching or carrying out advanced study or research at a university, college, school or other educational institution, receives for those activities shall be taxable only in the firstmentioned State.

(2) This Article shall not apply to remuneration which a professor or teacher receives for conducting research if the research is undertaken primarily for the private benefit of a specific person or persons.

ARTICLE 21

Australian Government’s Bilateral Aid to Fiji

Notwithstanding anything elsewhere in this Agreement, income derived by any person from the participation in any capacity whatsoever of that person in the Australian Government’s bilateral Aid Program to Fiji shall be exempt from Fiji tax if:

- (a) that person is not a resident of Fiji for the purposes of Fiji tax, or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of such participation, and
- (b) that income is derived from the aid fund and is, or upon the application of this Article will be, subject to tax in Australia.

ARTICLE 22

Students and Trainees

Where a student or trainee, who is a resident of one of the Contracting States or who was a resident of that State immediately before visiting the other Contracting State and who is temporarily present in that other State solely for the purpose of his or her education or training, receives payments from sources outside that other State for the purpose of the students or trainee's maintenance, education or training, those payments shall be exempt from tax in that other State.

ARTICLE 23

Income Not Expressly Mentioned

(1) Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that State.

(2) However, any such income derived by a resident of one of the Contracting State may also be taxed in that other State.

(3) The provisions of paragraph (1) shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such a case, the provisions of **Article 7** or **14**, as the case may be, shall apply.

ARTICLE 24

Source of Income

(1) Profits, income or gains derived by a resident of one of the Contracting States which, under any one or more of **Articles 6 to 8** and **10 to 19** and **Article 23** may be taxed in the other Contracting State, shall for the purposes of the law, relating to tax, of that other Contracting State be deemed to be income from sources in that other State.

(2) Profits, income or gains derived by a resident of one of the Contracting States which, under any one or more of **Articles 6 to 8**, **10 to 19** and **Article 23** may be taxed in the other Contracting State, shall for the purposes of **Article 25** and of the law, relating to tax, of the firstmentioned State be deemed to be income from sources in the other State.

ARTICLE 25

Elimination of Double Taxation

(1) Subject to any provisions of the law of Fiji which may from time to time be in force and which relate to the allowance of a credit against Fiji tax of tax paid in a country outside Fiji (which shall not affect the general principle hereof), Australian tax paid under the law of Australia and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a resident of Fiji from sources in Australia shall be allowed as a credit against Fiji tax payable in respect of that income.

(2)(a) Subject to the provisions of the law of Australia from time to time in force which relate to the allowance of a credit against Australian tax of tax paid in a country outside Australia (which shall not affect the general principle hereof), Fiji tax paid under the law of Fiji and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Australia from sources in Fiji shall be allowed as a credit against Australian tax payable in respect of that income.

(b) Where a company which is a resident of Fiji and is not a resident of Australia for the purposes of Australian tax pays a dividend to a company which is a resident of Australia and which controls directly or indirectly not less than 10 per cent of the voting power of the firstmentioned company, the credit referred to in paragraph (1) shall include the tax paid by the firstmentioned company in respect of that portion of its profits out of which the dividend is paid.

(3) For the purposes of paragraph (2), Fiji tax paid shall include an amount equivalent to the amount of any tax forgone which, under the law of Fiji and in accordance with this Agreement, would have been payable as tax on income but for an exemption from, or a reduction of, tax on that income resulting from the operation of.

- (a) (i) subsection 8(1) of the Hotels Aid Act 1964 (Cap. 215); or
(ii) paragraph 8(6)(c), paragraph 9(3)(h), subsection 10A(6), paragraph (a), (b), (d) or (f) of subsection 16(2) or subsection 16(4) or (5) of the Income Tax Act 1974,

insofar as those provisions 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, or

- (b) any other provision which may subsequently be made granting an exemption from or reduction of tax which the authorised representatives of the Governments of Australia and Fiji agree in writing to be of a substantially similar character, provided that such provisions are not modified thereafter or are modified only in minor respects so as not to affect their general character.

(4) The provisions of paragraph (3) shall apply only in relation to income derived in any of the first **five** years of income in relation to which this Agreement has effect by virtue of subparagraph (a)(ii) of **Article 29** and in any later year of income that may be agreed in an exchange of letters for this purpose by the authorised representatives of the Governments of Australia and Fiji.

ARTICLE 26

Mutual Agreement Procedure

(1) Where a person who is a resident of one of the Contracting States considers that the actions of the competent authority of one or both of the Contracting States result or will result for the person in taxation not in accordance with this Agreement, the person may, notwithstanding the remedies provided by the national laws of those States, present a case to the competent authority of the Contracting State of which the person is a resident. The case must be presented within three years from the first notification of the action giving rise to taxation not in accordance with this Agreement.

(2) The competent authority shall endeavour if the claim appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with this Agreement.

(3) The competent authorities of the Contracting States shall jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement.

ARTICLE 27

Exchange of Information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for the carrying out of this Agreement or of the domestic laws of the Contracting States concerning the taxes to which this Agreement applies insofar as the taxation thereunder is not contrary to this Agreement. The exchange of information is not restricted by **Article 1**. Any information received by the competent authority of 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) concerned with the assessment or collection of, enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes to which this Agreement applies and shall be used only for such purposes.

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

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

ARTICLE 28

Diplomatic and Consular Officials

Nothing in this Agreement shall affect the Fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special international agreements.

ARTICLE 29

Entry into Force

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in Fiji, as the case may be, and thereupon this Agreement shall have effect:

- (a) in Australia:
 - (i) in relation to withholding tax on income that is derived by a non-resident, in respect of income derived on or after 1 January in the calendar year immediately following that in which the Agreement enters into force,
 - (ii) in relation to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year immediately following that in which the Agreement enters into force,
- (b) in Fiji:
 - in relation to Fiji tax in respect of income, profits or gains derived during any income year beginning on or after 1 January in the calendar year immediately following that in which the Agreement enters into force.

ARTICLE 30

Termination

This Agreement shall continue in effect indefinitely, but either of the Contracting States may on or before 30 June in any calendar year beginning after the expiration of five years from the date of its

entry into force, give to the other Contracting State through the diplomatic channel written notice of termination and, in that event, this Agreement shall cease to be effective:

- (a) in Australia:
 - (i) in relation to withholding tax on income that is derived by a non-resident in respect of income derived on or after 1 January in the calendar year immediately following that in which the notice of termination is given,
 - (ii) in relation to other Australian tax, in respect of income, profits or gains of any year of income beginning on or after 1 July in the calendar year immediately following that in which the notice of termination is given,
- (b) in Fiji:
 - in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after 1 January in the calendar year immediately following that in which the notice of termination is given.

IN Witness whereof the undersigned, duly authorised thereto, have signed this Agreement.

DONE in duplicate at Canberra this fifteenth day of October one thousand nine hundred and ninety in the English language.

For Fiji:

Hon. J. N. KAMIKAMICA
Minister of Finance and Economic
Planning for the Government of the
Republic of Fiji

For Australia:

Hon. P. J. KEATING
Minister of State
for the Treasury
of Australia

◆ **JAPAN**

Cmd. 2064 (United Kingdom)

Ratifications were exchanged on 23rd April 1963, and the Convention entered into force on that date

*Application extended to Fiji by:
LN 113/1970 [FRGS No. ? October 1970]*

Note: By Diplomatic Notes entered into

CONVENTION BETWEEN GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

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

Have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of the present Convention are:—

- (a) In the United Kingdom of Great Britain and Northern Ireland:
The income tax (including surtax) and the profits tax (hereinafter referred to as “United Kingdom tax”);
- (b) In Japan:
The income tax and the corporation tax (hereinafter referred to as “Japanese tax”);

and the local taxes referred to in **Articles V** and **XVII** of the present Convention.

(2) The present Convention shall also apply to any other taxes of a character substantially similar to those referred to in the preceding paragraph imposed in the United Kingdom or Japan subsequently to the date of signature of the present Convention.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland;
- (b) the term “Japan”, as used in a geographical sense, means all the territory in which the laws relating to Japanese tax are enforced;
- (c) the terms “one of the Contracting States” and “the other Contracting State” mean the United Kingdom or Japan, as the context requires;
- (d) the term “tax” means United Kingdom tax or Japanese tax, as the context requires;
- (e) the term “United Kingdom corporation” means any body corporate which is managed and controlled in the United Kingdom and which is not a Japanese corporation, and the term “Japanese corporation” means any corporation or other association having juridical personality or any association without juridical personality which has its head or principal office in Japan; and the terms “corporation of one of the Contracting States” and “corporation of the other Contracting State” mean a United Kingdom corporation or a Japanese corporation, as the context requires;
- (f) the terms “resident of the United Kingdom” and “resident of Japan” mean respectively any individual who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Japan for the purposes of Japanese tax, and any individual who is resident in Japan for the purposes of Japanese tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and the terms “resident of one of the Contracting

States” and “resident of the other Contracting State” mean a resident of the United Kingdom or a resident of Japan, as the context requires;

- (g) the terms “United Kingdom enterprise” and “Japanese enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident or corporation of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident or corporation of Japan, and the terms “enterprise of one of the Contracting States” and “enterprise of the other Contracting State” mean a United Kingdom enterprise or a Japanese enterprise, as the context requires;
- (h) the term “industrial or commercial profits” includes manufacturing, mercantile, agricultural, fishing, mining, financial and insurance profits, but does not include income in the form of dividends, interest, rent, royalty as defined in paragraph (2) of **Article VIII**, a sum of the kind referred to in paragraph (3) of that Article, a royalty or other amount of the kind referred to in paragraph (6) of that Article, gains derived from the alienation of capital assets or remuneration for personal services;
- (i) (i) The term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.
 - (ii) A permanent establishment shall include especially:
 - (aa) a place of management;
 - (bb) a branch;
 - (cc) an office;
 - (dd) a factory;
 - (ee) a workshop;
 - (ff) a mine, quarry or other place of extraction of natural resources.,
 - (gg) a building site or construction or assembly project which exists for more than twelve months.
 - (iii) The term “permanent establishment” shall not be deemed to include:
 - (aa) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
 - (bb) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
 - (cc) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
 - (dd) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
 - (ee) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.
 - (iv) An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if
 - (aa) it carries on supervisory activities in that other Contracting State for more than twelve months in connection with a construction, installation or assembly project which is being undertaken in that other Contracting State;

- (bb) it carries on a business which consists of providing the services of public entertainers referred to in paragraph (5) of **Article X** in that other Contracting State.
- (v) A person acting in one of the Contracting States on behalf of an enterprise of the other Contracting State other than an agent of an independent status to whom subparagraph (i)(vi) applies shall be deemed to be a permanent establishment in the former Contracting State if
 - (aa) he has, and habitually exercises in the former Contracting State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
 - (bb) he maintains in the former Contracting State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise.
- (vi) An enterprise of one of the Contracting States shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other Contracting State through a broker, general commission agent or any other agent of an independent status where such persons are acting in the ordinary course of their business.
- (vii) The fact that a corporation of one of the Contracting States controls or is controlled by a corporation which is a corporation of the other Contracting State, or, which carries on business in that other Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either corporation a permanent establishment of the other.
- (j) the term “taxation authorities” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; in the case of Japan, the Minister of Finance or his authorised representative; and in the case of any territory to which the present Convention is extended under **Article XXII**, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

(2) Where the present Convention provides (with or without other conditions) that income from sources in one of the Contracting States shall be exempt from tax of, or taxed at a reduced rate by, that Contracting State if it is subject to tax in the other Contracting State, and under the law in force in that other Contracting State the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the exemption or reduction of tax to be allowed under the present Convention in the former Contracting State shall apply only to so much of the income as is remitted to or received in the other Contracting State.

(3) In the application of the provisions of the present Convention by one of the Contracting States, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in that Contracting State relating to the taxes which are the subject of the present Convention.

ARTICLE III

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

(b) The industrial or commercial profits of a Japanese enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, 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.

(2) Where an enterprise of one of the Contracting States carries on a trade or business in the other Contracting State 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 in that other Contracting State 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.

(3) In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible and allocable, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) No portion of any profits arising to an enterprise of one of the Contracting States shall be attributed to a permanent establishment situated in the other Contracting State by reason of the mere purchase of goods or merchandise within that other Contracting State by the enterprise.

ARTICLE IV

Where

- (a) an enterprise of one of the Contracting States 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 one of the Contracting States and an enterprise of the other Contracting State,

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

ARTICLE V

(1) Notwithstanding the provisions of **Article III**, profits which an enterprise of one of the Contracting States derives from the operation of ships or aircraft shall be exempt from tax of the other Contracting State.

(2) An enterprise of one of the Contracting States shall likewise be exempt from any local tax in the other Contracting State which is or may be imposed on the basis of profits derived from the operation of ships or aircraft.

(3) The Agreement between the Contracting States constituted by the Notes exchanged in London on the 10th August, 1929¹ for the reciprocal exemption from taxation on shipping profits shall, on the entry into force of the present Convention, cease to be effective as from the dates from which the provisions of the present Convention have effect.

¹ Cmnd. 3396 (United Kingdom) – Treaty Series No. 25 (1929)

ARTICLE VI

(1) (a) Dividends derived from sources within the United Kingdom by a resident of Japan who is subject to Japanese tax in respect thereof shall be exempt from United Kingdom surtax.

(b) Dividends derived from sources within Japan by a resident of the United Kingdom or a United Kingdom corporation that is subject to United Kingdom tax in respect thereof shall not be subject to tax in Japan at a rate exceeding 15 per cent. However, the rate of tax shall not exceed 10 per cent on a dividend paid by a Japanese corporation to a United Kingdom corporation if, during the whole of the taxable year for which the dividend is paid, more than 50 per cent of the voting shares of the Japanese corporation was beneficially owned by the United Kingdom corporation.

(2) Where a corporation of one of the Contracting States derives profits or income from sources within the other Contracting State, there shall not be imposed in that other Contracting State any form of taxation on dividends paid by the corporation unless such dividends are paid to a resident or a corporation of that other Contracting State, or any tax in the nature of an undistributed profits tax on undistributed profits of the corporation, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

(3) The provisions of paragraph (1) of this Article shall not apply where a resident or a corporation of one of the Contracting States has a permanent establishment in the other Contracting State and such dividends are attributable to that permanent establishment; in such event such dividends as are attributable to that permanent establishment shall be treated as if they were industrial or commercial profits to which the provisions of **Article III** are applicable.

(4) If any of the rates of tax on the profits of corporations are altered in either Contracting State, the taxation authorities of the two Contracting States may consult each other in order to determine whether it is necessary for this reason to amend the provisions of paragraph (1) of this Article.

ARTICLE VII

(1) The rate of tax imposed by one of the Contracting States on interest derived from sources within that Contracting State by a resident or a corporation of the other Contracting State, that is subject to tax in that other Contracting State in respect thereof, shall not exceed 10 per cent.

(2) The provisions of paragraph (1) of this Article shall not apply where a resident or a corporation of one of the Contracting States has a permanent establishment in the other Contracting State and such interest is attributable to that permanent establishment; in such event such interest as is attributable to that permanent establishment shall be treated as if it were industrial or commercial profits to which the provisions of **Article III** are applicable.

(3) The term "interest" as used in the present Convention means interest on bonds, securities, notes, debentures, or any other form of indebtedness (including mortgages or bonds secured by immovable property), as well as any excess of the amount repaid in respect of any form of indebtedness over the amount lent.

(4) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount of the interest paid, having regard to the debt claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the Contracting States' own laws, due regard being had to the other provisions of the present Convention.

ARTICLE VIII

(1) The rate of tax imposed by one of the Contracting States on any royalty derived from sources within that Contracting State by a resident or a corporation of the other Contracting State, that is subject to tax in that Other Contracting State in respect thereof, shall not exceed 10 per cent.

(2) The term “royalty” (as used in paragraph (1) of this Article) means any royalty or other amount paid as consideration for the use of, or for the right to use, any copyright, patent, design, secret process or formula, trade mark or other like property, and includes any rental or like payment in respect of cinematograph or television films or for the use of industrial, commercial or scientific equipment.

(3) The rate of tax imposed by one of the Contracting States on any sum arising within that Contracting State from the alienation of copyrights, patents, designs, secret processes and formulae, trade marks or other industrial inventions or of cinematograph or television films or rights therein and paid to a resident or a corporation of the other Contracting State shall not exceed 10 per cent.

(4) The provisions of paragraphs (1) and (3) of this Article shall not apply where a resident or corporation of one of the Contracting States has a permanent establishment in the other Contracting State and such royalty or sum is attributable to that permanent establishment; in such event such royalty or sum as is attributable to that permanent establishment shall be treated as if it were industrial or commercial profits to which the provisions of **Article III** are applicable

(5) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person, the amount royalty or the sum paid, having regard to the use, right or property for which it is paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions the preceding paragraphs of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the Contracting States’ own laws, due regard being had to the other provisions of the present Convention.

(6) Any royalty or other amount paid in respect of the operation of a mine, quarry or any other place of extraction of natural resources may be taxed in the Contracting State in which the mine, quarry or place of extraction is situated.

ARTICLE IX

(1) Gains derived from the alienation of capital assets (other than any sum referred to in paragraph (3) of Article **VIII**) in one of the Contracting States by a resident or a corporation of the other Contracting State shall be exempt from tax of that former Contracting State.

(2) Notwithstanding the provisions of paragraph (1) of this Article:

- (a) gains derived from the alienation of immovable property situated in one of the Contracting States or of rights to use such property or to operate a mine, quarry or other place of extraction of natural such resources situated in that Contracting State by a resident or a corporation of the other Contracting State may be taxed in that former Contracting State;
- (b) gains derived from the alienation of a permanent establishment or fixed base situated in one of the Contracting States or from the alienation of capital assets pertaining to such permanent establishment or fixed base may be taxed in that Contracting State; in such event those gains shall be deemed to be attributable to that permanent establishment or fixed base;

- (c) gains derived by a resident of one of the Contracting States from the alienation of personal property in the other Contracting State during his stay in that other Contracting State may be taxed in that other Contracting State;
- (d) gains derived by a resident or a corporation of one of the Contracting States from the alienation of shares of a corporation of the other Contracting State may be taxed in that other Contracting State, if
 - (i) shares held or owned by the alienator (together with such shares held or owned by any other related persons as may be aggregated therewith) amount to at least 25 per cent. of the entire share capital of such corporation at any time during the taxable year or year of assessment, and
 - (ii) the total of the shares alienated by the alienator and such related persons during that taxable year or year of assessment amounts to at least 5 per cent of the entire share capital of such corporation.

ARTICLE X

(1) Income derived by a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall not be subject to tax in the other Contracting State unless he has a fixed base regularly available to him in that other Contracting State for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that fixed base may be taxed in that other Contracting State.

(2) Subject to the provisions of **Articles XI to XIV**, salaries, wages and similar remuneration derived by a resident of one of the Contracting States in respect of an employment shall not be subject to tax in the other Contracting State unless the employment is exercised in that other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, remuneration derived by a resident of one of the Contracting States in respect of an employment exercised in the other Contracting State shall be exempt from tax of that other Contracting State in any taxable year or year of assessment, if

- (a) he is present within that other Contracting State for a period or periods not exceeding in the aggregate 183 days during that year, and
- (b) he is employed by a resident or a corporation of the former Contracting State and is paid by or on behalf of that resident or corporation, and
- (c) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in that other Contracting State.

(4) In relation to the remuneration of a director of a company or a corporation derived from the company or the corporation the preceding provisions of this Article as if the remuneration were remuneration of an employee in respect of employment, and as if the reference to an employer were a reference to the company or the corporation.

(5) Notwithstanding the provisions of paragraphs (1) and (3) of this Article, the profits or remuneration of public entertainers, such as theatre, motion picture, radio or television artistes, musicians and athletes, from their personal activities as such may be taxed in the Contracting State in which these activities are exercised.

(6) Notwithstanding the provisions of paragraphs (2) to (5) of this Article, where an individual performs services as an employee on ships or aircraft operated by an enterprise of one of the Contracting States, such services shall be deemed to be exercised in that Contracting State.

ARTICLE XI

(1) (a) Remuneration (not being a pension) paid by the Government of Japan or any local government of Japan to any individual in respect of services rendered in the discharge of governmental functions and any pension paid to such an individual in respect of such services shall be exempt from United Kingdom tax, unless the individual is ordinarily resident in the United Kingdom and, where the remuneration is not a pension, is not so resident solely for the purpose of rendering those services.

(b) Remuneration, including pensions, paid out of public funds of the United Kingdom or Northern Ireland or the funds of any local authority in the United Kingdom to any individual in respect of services rendered in the discharge of governmental functions shall be exempt from Japanese tax, unless the individual is a national of Japan or is admitted to Japan for permanent residence therein.

(2) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on for purposes of profit.

ARTICLE XII

(1) Pensions and other similar remuneration received in respect of past employment, by a resident of one of the Contracting States who is subject to tax there in respect thereof shall be exempt from tax of the other Contracting State.

(2) The Provisions of paragraph (1) of this Article shall not apply to pensions of the kind referred to in paragraph (1) of **Article XI**, or to other pensions in the nature of social security provision paid by the Government of Japan or any local government or government agency, or paid out of funds to which the Government of Japan or any local government or government agency of Japan contributes.

ARTICLE XIII

A professor or teacher from one of the Contracting States, who visits the other Contracting State for a period not exceeding two years for the purposes of teaching at a university, college, school or other educational institution in that other Contracting State, shall be exempt from tax of that other Contracting State in respect of remuneration for that teaching.

ARTICLE XIV

(1) An individual from one of the Contracting States who is temporarily present in the other Contracting State solely as a student at a recognised university, college or school, or as a business apprentice, shall be exempt from tax of that other Contracting State in respect of—

(a) remittances from the former Contracting State for the purpose of his maintenance, education or training; and

(b) any scholarship or similar grant, allowance or award.

(2) An individual from one of the Contracting States who is temporarily present in the other Contracting State for a period not exceeding two years as a recipient of a grant, allowance or award for the primary purpose of study or research from a governmental, religious, charitable, scientific, literary or educational organisation shall be exempt from tax of that other Contracting State in respect of the amount of such grant, allowance or award.

(3) An individual from one of the Contracting States who is an employee of, or is under contract with, an enterprise of that Contracting State or any such organization of that Contracting State as is referred to in paragraph (2) of this Article, and who is temporarily present in the other Contracting State for a period not exceeding one year solely to acquire technical, professional or business experience from a person other than such enterprise or organization, shall be exempt from tax of that other Contracting State on remittances from the former Contracting State for the purpose of his maintenance.

ARTICLE XV

(1) Individuals who are residents of Japan shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom income tax as British subjects not resident in the United Kingdom.

(2) Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs, and reductions for the purposes of Japanese income tax as Japanese nationals not resident in Japan.

ARTICLE XVI

(1) For the purposes of the present Convention:

- (a) dividends paid by a corporation of one of the Contracting States shall be treated as income from sources within that Contracting State;
- (b) interest paid by one of the Contracting States, including local governments thereof, or by an enterprise of one of the Contracting States, shall be treated as income from sources within such Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft) which is paid
 - (i) by an enterprise of one of the Contracting State with a permanent establishment outside both Contracting States to a resident or a corporation of the other Contracting State, or
 - (ii) by an enterprise of one of the Contracting States with a permanent establishment in the other Contracting State

on indebtedness incurred for the use of (or, in the case of a banking business, on deposits made with) the permanent establishment in the conduct of its trade or business and which is borne by that permanent establishment shall be treated as income from sources within the territory where the permanent establishment is situated;

- (c) royalties as defined in paragraph (2) of **Article VIII** shall be treated as income from sources within the Contracting State in which the property referred to in that paragraph is used,
- (d) sums derived from the alienation of the property referred to in paragraph (3) of **Article VIII** shall be treated as arising from sources within the Contracting State in which such property is used.

(2) For the purposes of **Article XVII**:

- (a) income in respect of professional services or other independent activities of a similar character shall be deemed to be income from sources within the Contracting State in which the services or activities are performed;

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- (b) salaries, wages or similar remuneration in respect of an employment or directorship shall be deemed to be income from sources within the Contracting State in which the employment or directorship is exercised;
 - (c) income derived from immovable property (not including interest from mortgages or bonds secured by immovable property) shall be treated as income derived from sources within the Contracting State in which the immovable property is situated.

ARTICLE XVII

(1) The laws of the Contracting States shall continue to govern the taxation of income arising in either of the Contracting States, except where express provision to the contrary is made in the present Convention. Where income is subject to tax in both Contracting States, relief from double taxation shall be given in accordance with the following paragraphs of this Article.

(2) (a) 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, Japanese tax payable, whether directly or by deduction, in respect of income from sources within Japan shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is a dividend paid by a Japanese corporation to a United Kingdom company which controls, directly or indirectly, not less than 25 per cent either of the voting shares of the Japanese corporation or of the total shares issued by that corporation, the credit shall take into account the Japanese tax payable by the Japanese corporation in respect of its profits.

(b) For the purposes of this paragraph, the term “Japanese tax” shall be taken to include local taxes in so far as they are levied on profits or income.

(3) Subject to the provisions of the law of Japan regarding the allowance as a credit against Japanese tax of tax payable in any country other than Japan, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against the Japanese tax payable in respect of that income. Where such income is a dividend paid by a United Kingdom company to a Japanese corporation which owns not less than 25 per cent either of the voting shares of the United Kingdom company or of the total shares issued by that company, the credit shall take into account the United Kingdom tax payable by the United Kingdom company in respect of its profits.

ARTICLE XVIII

The provisions of the present Convention shall not be construed so as to restrict in any manner any exemption, relief, deduction, credit or other allowance now or hereafter accorded by the laws of either of the Contracting States in determining the tax of that Contracting State.

ARTICLE XIX

The taxation authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against tax avoidance in relation to the taxes which are the subject of the present Convention. 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 tax or the determination of appeals in relation thereto. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

ARTICLE XX

(1) Where a taxpayer shows to the satisfaction of the taxation authorities of the Contracting State of which the taxpayer is a resident or a corporation that the taxpayer has not received the treatment in the other Contracting State to which the taxpayer is entitled under any provision, of the present Convention, those taxation authorities shall consult with the taxation authorities of the other Contracting State with a view to the avoidance of the double taxation in question.

(2) The taxation authorities of the Contracting States may communicate with each other directly for the purpose of giving effect to the provisions of the present Convention and for resolving any difficulty or doubt as to the application or interpretation of the present Convention.

ARTICLE XXI

(1) The nationals of one of the Contracting States 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 Contracting State in the same Circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of one of the Contracting States has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

(3) Enterprises of one of the Contracting States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents or corporations of the other Contracting State, shall not be subjected in the former Contracting 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 former Contracting State are or may be subjected.

(4) In this Article the term “nationals” means:

(a) in relation to the United Kingdom:

- (i) all citizens of the United Kingdom and Colonies and British protected persons other than those citizens and protected persons who derive their status as such from connection with any territory to which the present Convention may be extended under **Article XXII** but has not been so extended;
- (ii) all citizens of Rhodesia and Nyasaland provided that the present Convention has been extended under **Article XXII** to the Federation of Rhodesia and Nyasaland; and
- (iii) all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the United Kingdom or any territory to which the present Convention is extended under **Article XXII**.

(b) in relation to Japan, all individuals possessing the nationality of Japan and all corporations and other associations (with or without juridical personality) deriving their status as such from the law in force in Japan.

(5) In this Article the term “taxation” means taxes of every kind.

(6) Nothing contained in this Article shall be construed—

(a) as obliging either of the Contracting States to grant to nationals of the other Contracting State not resident in the former contracting State those personal allowances, reliefs and reductions for tax purposes which are by law available only to residents of that former Contracting State; or

- (b) as affecting the provisions of the Japanese law under which distributed profits are, in the case of Japanese corporations, taxed at a lower rate than undistributed profits.

ARTICLE XXII

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including, if necessary, conditions as to the entry into force and termination of such extension) as may be specified and agreed between the Contracting States.

(2) The termination by the United Kingdom or Japan of the present Convention under **Article XXIV** shall, unless otherwise expressly agreed by both Contracting States, terminate the application of the present Convention to any territory to which the present Convention has been extended under this Article.

ARTICLE XXIII

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) Upon the exchange of the instruments of ratification the present Convention shall enter into force², and its provisions shall have effect:

(a) In the United Kingdom:

as respects income tax (including surtax) for any year of assessment beginning on or after the sixth day of April in the calendar year in which the exchange of the instruments of ratification takes place; and as respects profits tax in respect of the following profits—

- (i) profits by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after the sixth day of April in the said calendar year.,
- (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the first day of April in the said calendar year or are attributable to so much of any chargeable accounting period failing partly before and partly after that date as falls after that date;

(b) In Japan:

as respects income for any taxable year beginning on or after the first day of January in the calendar year in which the exchange of the instruments of ratification takes place.

ARTICLE XXIV

Either of the Contracting States may terminate the present Convention after a period of five years from the date on which the present Convention enters into force by giving to the other Contracting State, through the diplomatic channel, written notice of termination, provided that any such notice shall be given only on or before the thirtieth day of June in any calendar year, and, in such event, the present Convention shall cease to be effective:

(a) In the United Kingdom:

² Convention entered into effect between the United Kingdom and Japan on 23rd April 1963

as respects income tax (including surtax) for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which the notice is given;

as respects profits tax in respect of the following profits—

- (i) profits by reference to which income tax is chargeable for any year of assessment beginning on or after the sixth day of April in the calendar year next following that in which the notice is given;
- (ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the first day of April in the next following calendar year or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date,

(b) In Japan:

as respects income for any taxable year beginning on or after the first day of January in the calendar year next following that in which the notice is given.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed the present Convention.

Done in duplicate at Tokyo this fourth day of September one thousand nine hundred and sixty-two, in the English and Japanese languages, both texts being equally authoritative.

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

O. C. MORLAND.

For the Government of Japan:

MASAYOSHI OHIRA.

DOUBLE TAXATION RELIEF ARRANGEMENTS
WITH JAPAN

Order 7 October 1970

The arrangements specified in the Schedule to this Order have been made between the Government of the United Kingdom and Northern Ireland and the Government of Japan and that it is expedient that those arrangements should have effect in Fiji in relation to tax notwithstanding anything contained in any enactment.

SCHEDULE

The Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect of Taxes on Income, signed at Tokyo on 4 September 1962.

U **KOREA**

LN 38/1995 [FRGS No. 13 7th April 1995]

INCOME TAX ACT
(CHAPTER 201)

THE Government of the Republic of Fiji has made arrangements with the Government of the Republic of Korea with a view to the prevention of the levying under the laws of Fiji and of Korea of income tax in respect of the same income, and rendering of reciprocal assistance in the administration of, and the collection of taxes under the income tax laws of Fiji and of Korea.

The arrangements so made are embodied in a Convention concluded on 19 September 1994, a copy of which is set out in the Schedule.

Dated this 28 day of February 1995.

BERENADO VUNIBOBO
Minister of Finance and
Economic Development

SCHEDULE

CONVENTION BETWEEN THE REPUBLIC OF KOREA AND THE REPUBLIC OF FIJI FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME

THE Government of the Republic of Korea and the Government of the Republic of Fiji, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and for the encouragement of mutual trade and investment have agreed as follows:

ARTICLE 1

Personal Scope

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

ARTICLE 2

Taxes Covered

- (1) The taxes to which this Convention shall apply are:
- (a) In the case of Korea:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the inhabitant tax, (hereinafter referred to as “Korean Tax”);
 - (b) In the case of Fiji:
 - (i) the income tax including normal tax, non-resident dividend/interest/royalty withholding tax, dividend tax; and
 - (ii) the land sales tax, (hereinafter referred to as “Fiji Tax”).
- (2) The Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

ARTICLE 3

General

- (1) For the purposes of this Convention, unless the context otherwise requires:
- (a) the term “Korea” means the territory of the Republic of Korea including any area adjacent to the territorial sea of the Republic of Korea which, in accordance with international law, has been or may hereafter be designated under the laws of the Republic of Korea as an area within which the sovereign rights of the Republic of Korea with respect to the sea-bed and sub-soil and their natural resources may be exercised;
 - (b) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies, the airspace above it and all areas of water which, consistently with international law, have been, or may hereafter be designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the sea-bed and its sub-soil and the natural resources thereof;
 - (c) the term “a Contracting State”, and “the other Contracting State” means Korea or Fiji, as the context requires;
 - (d) the term “tax” means Korean tax or Fiji tax, as the context requires;
 - (e) the term “person” includes an individual, a company and any other body of persons;
 - (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
 - (g) the term “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (h) the term “nationals” means:
 - (i) all individuals possessing the nationality of a Contracting State;
 - (ii) all legal persons, partnerships and associations deriving their status as such from the laws in force in a Contracting State;

- (i) 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;
 - (j) the term “competent authority” means:
 - (i) in the case of Korea, the Minister of Finance or his authorized representative;
 - (ii) in the case of Fiji, the Commissioner of Inland Revenue or his authorized representative.
- (2) In determining, for the purposes of **Articles 10, 11 or 12**, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.
- (3) As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the laws of that State concerning the taxes to which the Convention applies.

ARTICLE 4

Resident

- (1) For the purpose of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of head or main office, place of management, place of registration or any other criterion of a similar nature, but this term does not include any person who is liable to tax in that State in respect only of income from sources in that State.
- (2) Where by reason of the provisions of paragraph (1), 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 State which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident of the state with which his personal and economic relations are closer (centre of vital interests);
 - (b) if the State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both 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), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In case of doubts the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

Permanent Establishment

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

(2) The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
- (g) a farm, plantation or other place where agriculture, forestry, plantation or other related activities, are carried on.

(3) A building site or construction or installation or assembly project or supervisory activities in connection therewith constitutes a permanent establishment only if it lasts more than nine months.

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

- (a) the use of facilities solely for the purpose of storage, 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), 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), where a person, other than an agent of independent status to whom paragraph (6) applies, is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that 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) 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 laws 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, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) 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) 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) where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the 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) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

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

ARTICLE 8

Shipping and Air Transport

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

(2) The provisions of paragraph (1) shall also apply to profits derived from the participation in a pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

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 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.

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 dividend is a resident, and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the beneficial owner is a company (other than a partnership) which holds directly at least 25 per cent of the capital of the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

The paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term “dividends” as used in this Article means income from shares as well as income from other corporate rights which is subjected to the same taxation treatment income from shares by the laws of the State of which the company making the distribution is a resident.

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

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed based situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such 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 the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(3) Notwithstanding the provisions of paragraph (2), interest arising in a Contracting State and derived by the Government of the other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government, or by any resident of the other Contracting State with respect to debt-claims guaranteed or indirectly financed by the Government of that other Contracting State including political subdivisions and local authorities thereof, the Central Bank of that other Contracting State or any financial institution wholly owned by that Government shall be exempt from tax in the first-mentioned Contracting State.

(4) For the purposes of paragraph (3), the terms “the Central Bank” and “Financial institution wholly owned by the Government” mean:

- (a) in the case of Korea:
 - (i) the Bank of Korea;
 - (ii) the Korea Export-Import Bank;
 - (iii) the Korea Development Bank;
- (b) in the case of Fiji:
 - (i) the Reserve Bank of Fiji;
 - (ii) the Fiji Development Bank;
- (c) in the case of both Korea and Fiji:

such other financial institution the capital of which is wholly owned by the Government of the Republic of Korea or the Government of the Republic of Fiji as the case may be as may be agreed upon from time to time between the Governments of the two Contracting States.

(5) The term “interest” as used in this Article means income from debt-claim of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor’s profits, and in particular, income from Government securities and income from bonds or debentures, including premium and prizes attaching, to such securities, bonds or debentures, other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises.

(6) The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the interest being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such case the provisions of **Article 7** or **Article 14**, as the case may be, shall apply.

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

(8) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of interest, having regard to the debt-claim for which it is paid, exceeds 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. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

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 fixed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the royalties, the tax so charged 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, and films or tapes for radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for the use of or the right to use industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

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

(5) Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State, however, where 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 based 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 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. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital Gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in **Article 6** and situated In the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of movable property forming part o 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.

(3) Gains from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the alienator is a resident.

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

ARTICLE 14

Independent Personal Services

(1) Income derived by a resident of a Contracting State in respect of professional services including management services or other independent activities of a similar character shall be taxable only in that State except in the following circumstances when such income may also be taxed in the other Contracting State—

-
- (a) if he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities, and in that case, only so much of the income as is attributable to that fixed base may be taxed in that other Contracting State;
 - (b) if his stay in the other Contracting State is for a period or periods amounting to or exceeding in the aggregate 183 days in the relevant “previous year” or “year of income”, as the case may be, and, in that case, only so much of the income as is derived from his activities performed in that other State may be taxed in that other State; or
 - (c) if in a year of income, he derives gross remuneration (including expenses reimbursed to him or borne on his behalf or the value of any benefit), in respect of his activities in the other Contracting State, that is paid by a resident of that Contracting State or is deductible in determining taxable profits of a permanent establishment or a fixed base situated in that Contracting State and that exceeds ten thousand Fijian dollars or its equivalent in Korea.
- (2) The term “professional services” includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

ARTICLE 15

Dependent Personal Services

- (1) Subject to the provisions of Articles **16**, **18**, **19**, **20** and **21**, 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), 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 that other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
 - (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of that 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 in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State, shall be taxable only in that State.

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 Contracting State.

ARTICLE 17

Entertainers and Athletes

(1) Notwithstanding the provisions of **Articles 14 and 15**, income derived by a resident of a Contracting State as an entertainer, such a theatre, motion picture, radio or television artiste, or a musician, or as an athlete, 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 a personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of **Articles 7, 14 and 15**, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs (1) and (2) shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers or athletes if their visit to that State is substantially supported from the public funds of the other Contracting State, including those of any political subdivision, a local authority or statutory body thereof.

ARTICLE 18

Pensions and Annuities

(1) Subject to the provisions of paragraph (2) of Article **19**, pensions, annuities and other similar remuneration paid to a resident of a Contracting State in consideration of past employment 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.

(3) Any alimony or other maintenance payment arising in one of the Contracting States and paid to a resident of the other Contracting State shall be taxable only in the firstmentioned State.

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 taxed only in that State.

(b) However, 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.

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- (b) However, such pension shall be taxable only in the other Contracting State of the individual is a resident of, and a national of, that State.
- (3) The provisions of **Articles 15, 16 and 18** 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.
- (4) The provisions of paragraphs (1) and (2) of this Article shall likewise apply in respect of remuneration or pensions paid by:
- (a) in the case of Korea: the Bank of Korea, the Export-Import Bank of Korea, the Korea Development Bank, the Korea Trade Promotion Corporation and other Government owned institutions performing functions of a governmental nature as may be agreed upon from time to time by the Government of the two Contracting States.
- (b) in the case of Fiji: the Reserve Bank of Fiji and other Government owned institutions performing functions of a governmental nature as may be agreed upon from time to time by the Government of the two Contracting States.

ARTICLE 20

Students and Trainees

Payments which a student or trainee who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the firstmentioned 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 State, provided that such payments arise from sources outside that State.

ARTICLE 21

Professors and Teachers

An individual who is or was a resident of a Contracting State immediately before making a visit to the other Contracting State, who, at the invitation of any university, college, school or other similar educational institution, which is recognised by the competent authority in that other Contracting State, visits that other Contracting State for a period not exceeding two years solely for the purpose of teaching or research or both at such educational institution shall be exempt from tax in that other Contracting State on his remuneration for such teaching or research.

ARTICLE 22

Other Income

(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property, as defined in paragraph (2) of **Article 6**, 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 23

Avoidance of Double Taxation

- (1) In the case of a resident of Fiji, double taxation shall be avoided as follows:

Subject to any provisions of the law of Fiji which may from time to time be in force and which relate to the allowance of a credit against Fiji tax of tax paid in a country outside Fiji (which shall not affect the general principle hereof), Korean tax paid under the law of Korea and consistently with this Convention, whether directly or by deduction, in respect of income derived by a resident of Fiji from sources in Korea shall be allowed as a credit against Fiji tax payable in respect of that income.

- (2) In the case of a resident of Korea, double taxation shall be avoided as follows:

- (a) Subject to the provisions of Korean tax law regarding the allowance as a credit against Korean tax of tax payable in any country other than Korea (which shall not affect the general principle hereof), the Fiji tax payable (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) under the laws of Fiji and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within Fiji shall be allowed as a credit against Korean tax payable in respect of that income. The credit shall not, however, exceed that proportion of Korean tax which the income from sources within Fiji bears to the entire income subject to Korean tax.
- (b) For the purposes of paragraph (2)(a), Fiji tax shall be deemed to include the tax which otherwise would have been payable in that state according to this Convention and the law of Fiji but has been reduced or exempted from the operation of:
- (i) subsection 8(1) of the Hotels Aid Act 1964¹; or paragraph 8(6)(c), paragraph 9(3)(h), subsection 10A(6), paragraph (a), (b), (d) or (f) of subsection 16(2) or subsection 16(4) or (5) of the Income Tax Act 1974² insofar as those provisions were in force on and have not been modified since, the date of signature of this Convention, or have been modified only in minor respects so as not to effect their general character; or
 - (ii) any other provision which may subsequently be made granting exemption or reduction of tax which the competent authorities of the Governments of Korea and Fiji agree in writing to be of a substantially similar character, provided that such provisions are not modified thereafter or are modified only in minor respects so as not to affect their general character.
- (c) The provisions of paragraph (2)(b) shall apply only in relation to income derived in any of the first five years of income in relation to which this Convention enters into force by virtue of paragraph (1) of **Article 28**, and in any later year of income that may be agreed in an exchange of letters for this purpose by the competent authorities of the Governments of Korea and Fiji.

ARTICLE 24

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 requirement to which nationals of that other State in the same circumstances are or may be subjected.

¹ Cap. 215

² Cap. 201

(2) The taxation of 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. This provision shall not be construed as obliging a Contracting State to grant to residents of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(3) Except where the provisions of **Article 9**, paragraph (8) of **Article 11**, or paragraph (6) of **Article 12** apply, interest, royalties and other disbursements paid by an enterprise of 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 requirements 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) In this Article, the term “taxation” means taxes which are the subject of this Convention.

ARTICLE 25

Mutual Agreement Procedure

(1) Where a person considers that action of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph (1) of **Article 24**, to that of the Contracting State of which he is a national. 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 the Convention.

(2) The competent authority must endeavour, if the objection appears 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 the view to the avoidance of taxation which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

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

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

ARTICLE 26

Exchange of information

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

(2) The exchange of information or documents shall be either on a routine basis or on request with reference to particular cases or both the competent authorities of the Contracting States shall agree from time to time on the list of the information or documents which shall be furnished on a routine basis.

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

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

ARTICLE 27

Diplomatic and Consular Officials

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

Entry into force

(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Suva as soon as possible. The Convention shall enter into force on the thirtieth day after the date of exchange of the instruments of ratification.

(2) This Convention shall have effect:

- (a) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January of the year of the signature; and
- (b) in respect of other taxes for taxation years beginning on or after the first day of January of the year of the signature.

ARTICLE 29

Termination

This Convention shall remain in force indefinitely but either of the Contracting State may, on or before the 30th day of June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give the other Contracting State through diplomatic channels, written notice of termination and, in such event, this Convention shall cease to have effect—

- (a) in Korea:
 - (i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following that in which the notice of termination is given; and
 - (ii) in respect of other taxes, for taxation years beginning on or after the first day of January in the calendar year next following that in which the notice of termination is given.
- (b) in relation to Fiji tax, in respect of income arising in any year of income beginning on or after the 1st day of January next following the calendar year in which the notice of termination is given.

In witness whereof the undersigned, being duly authorized thereto by their respective Government have signed this Convention.

Done in duplicate at Suva this Nineteenth day of September of the year one thousand nine hundred and ninety-four in the Korean and English languages, all texts being equally authentic. In case of any divergency of interpretation, the English text shall prevail.

KEN TAIK KANG
For the Government of the
Republic of Korea

FILIPE N. BOLE
For the Government of the
Republic of Fiji

U **MALAYSIA**

LN 1/1996 [FRGS No. 1 5th January 1996]

**INCOME TAX ACT
(CHAPTER 201)**

THE Government of the Republic of Fiji has made arrangements with the Government of Malaysia with a view to the prevention of the levying under the laws of Fiji and of Malaysia of income tax in respect of the same income, and rendering of reciprocal assistance in the administration of, and the collection of taxes under the income tax laws of Fiji and of Malaysia.

The arrangements so made are embodied in an Agreement concluded on 19 December 1995, a copy of which is set out in the Schedule.

Dated this 28th day of December 1995.

B. VUNIBOBO
Minister of Finance and
Economic Development

SCHEDULE

**AGREEMENT BETWEEN THE REPUBLIC OF FIJI AND THE GOVERNMENT OF MALAYSIA
FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL
EVASION WITH RESPECT TO TAXES ON INCOME.**

The Government of the Republic of Fiji and the Government of Malaysia,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and for the encouragement of mutual trade and investment 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 imposed by a Contracting State, irrespective of the manner in which they are levied.
2. The taxes which are the subject of this Agreement are:
 - (a) in Malaysia:
 - (i) the income tax; and
 - (ii) the petroleum income tax;
(hereinafter referred to as “Malaysian tax”);
 - (b) in Fiji:
the income tax (including normal tax, the non-resident dividend withholding tax, the interest withholding tax, royalty withholding tax and the dividend tax);
(hereinafter referred to as “Fiji tax”).
3. The Agreement shall also apply to any identical or substantially similar taxes on income which are imposed 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 important changes which have been made in their respective taxation laws.

Article 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:
 - (a) the term “Malaysia” means the territories of the Federation of Malaysia, the territorial waters of Malaysia and the sea-bed and subsoil of the territorial waters, and includes any area extending beyond the limits of the territorial waters of Malaysia, and the sea-bed and subsoil of any such area, which has been or may hereafter be designated under the laws of Malaysia as in accordance with international law as an area over which Malaysia has sovereign rights for the purposes of exploring and exploiting the natural resources, whether living or non-living;
 - (b) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies, the airspace above it and all areas of water which, consistently with international law, have been, or may hereafter be designated under the laws of Fiji as area over which the sovereignty of Fiji may be exercised with respect to the sea, the sea-bed and its subsoil and the natural resources thereof;
 - (c) the terms “a Contracting State”, and “the other Contracting State” mean Malaysia or Fiji as the context requires;
 - (d) the term “person” includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
 - (e) the term “company” means any body corporate or any entity which is fixed as a company or body corporate for tax purposes;
 - (f) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term “tax” means Malaysian tax or Fiji tax, as the context requires;

- (h) the term “national” means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State;
 - (ii) any legal person, partnership, association and any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) 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;
- (j) the term “competent authority” means:
 - (i) in the case of Malaysia, the Minister of Finance or his authorised representative; and
 - (ii) in the case of Fiji, the Commissioner of Inland Revenue or his authorised representative.

2. In determining, for the purposes of **Article 10, 11 or 12**, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

3. In this Agreement the terms “Fiji tax” and “Malaysian tax” do not include any amount which represents a penalty or penal interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies.

4. In application of this 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 State concerning the taxes to which this Agreement applies.

Article 4

RESIDENT

1. For the purposes of this Agreement the term “resident of a Contracting State” means:
 - (a) in the case of Malaysia, a person who is resident in Malaysia for the purposes of Malaysian tax; and
 - (b) in the case of Fiji a person who is resident in Fiji for the purposes of Fiji tax.
2. Where by reason of the provisions of paragraph (1) an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:
 - (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 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 not a permanent home available to him in either State, he shall be deemed to be a resident of the State in which he has an habitual abode;
 - (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the State of which he is a national;
 - (d) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where, by reason of the provisions of paragraph (1), a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the 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” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a work-shop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources;
- (g) a farm, plantation or other place where agricultural, forestry, plantation or other related activities are carried on;
- (h) a building site or construction, installation or assembly project which exists for more than 6 (six) months.

3. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character.

4. An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on business in or through that permanent establishment if it carries on supervisory activities in that other Contracting State for more than 6 (six) months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other Contracting State.

5. A person (other than a broker, general commission agent or any other agent of an independent status to whom paragraph (6) applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State, if that person:

- (a) has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or
- (b) maintain in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) manufactures, assembles, processes, packs or distributes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

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

However when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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 situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement the term "immovable property" shall be defined in accordance with the laws 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, oil or gas wells, quarries and other places of extracting of natural resources including indigenous and exotic timber or other forest produce. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provision of paragraph (1) 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) 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 on so much thereof as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph (3), 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 including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise, insofar as they are reasonably allocable to the permanent establishment, whether incurred in the State in which the permanent establishment is situated or elsewhere.

4. If the information available to the competent authority is inadequate to determine the profits to be attributed to the permanent establishment of an enterprise, nothing in this Article shall affect the application of any law of that State relating to the determination of the tax liability of a person by the exercise of a discretion or the making of an estimate by the competent authority, provided that the law shall be applied, so far as the information available to the competent authority permits, in accordance with the principle of this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income 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.

8. Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Agreement relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contracting States shall consult with each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

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. Paragraph (1) shall also apply to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool, a joint business or an international operating agency.

3. The term "operation of ships or aircraft" shall mean the business of transportation by sea or air of passengers, mail, livestock, or goods carried on by the owners or lessees or charterers of ships or aircraft and the incidental lease of ships or aircraft.

Article 9

ASSOCIATED ENTERPRISES

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

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

2. Profits included in the profits of an enterprise of a Contracting State under paragraph (1) shall be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.

Article 10

DIVIDENDS

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

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 15 per cent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other rights, not being debt-claims, participating in profits as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

4. The provisions of paragraphs (1) and (2) 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, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of **Article 7** shall apply.

5. Where a company which is a resident of a Contracting State derives income or profits from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of income or profits arising in such 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, the tax so charged shall not exceed 15 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph (2), interest to which a resident of Fiji is beneficially entitled shall be exempt from Malaysian tax if the loan or other indebtedness in respect of which the interest is paid is an approved loan as defined in Section 2(1) of the Income Tax Act, 1967 of Malaysia.

4. Notwithstanding the provisions of paragraphs (2) and (3), the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from that other State.

5. For the purposes of paragraph (4), the term "Government":

(a) in the case of Malaysia means the Government of Malaysia and shall include:

- (i) the governments of the States;
- (ii) the local authorities;
- (iii) the statutory bodies; and
- (iv) the Bank Negara Malaysia.

(b) in the case of Fiji means the Government of the Republic of Fiji and shall include:

- (i) Fiji National Provident Fund; and
- (ii) The Reserve Bank of Fiji (Central Bank)

(c) in the case of both Malaysia and Fiji, any other institution the capital of which is wholly owned by either the Government of Malaysia including that of the governments of the States or the Government of the Republic of Fiji as may be agreed from time to time between the competent authorities of both the Contracting States.

6. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures, and including all other income assimilated to income from money lent by the taxation law of the Contracting State in which the income arises. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

7. Paragraphs (1), (2) and (3) 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 in that State, and the debt-claim in respect of which the interest is paid is effectively connected with that permanent establishment. In such a case, **Article 7** shall apply.

8. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or statutory body 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 in connection with which the indebtedness on

which the interest is paid was incurred, and such interest is borne by such permanent establishment then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

9. 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, having regard to the debt-claim for which it is paid, exceeds 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 to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

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 State, but if the recipient's the beneficial owner of the royalties, the tax so charged shall not exceed 15 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:

- (a) the use of, or the right to use, any patent, trade mark, design or model, plan, secret formula or process, or any copyright of scientific work, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience;
- (b) the use of, or the right to use, cinematograph films, or tapes for radio or television broadcasting, any copyright of literary or artistic work.

4. The provisions of paragraphs (1) and (2) 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, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of **Article 7** shall apply.

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

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right of information for which they are paid, exceeds 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. In such a 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.

Article 13

TECHNICAL FEES

1. Technical fees derived from a Contracting State by a resident of the other Contracting State who is the beneficial owner thereof and is subject to tax in that other State in respect thereof may be taxed in the first-mentioned Contracting State at a rate not exceeding 15 per cent of the gross amount of the technical fees.

2. The term technical fees as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a scientific, technical, industrial, commercial, managerial or consultancy nature.

3. The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise through a permanent establishment situated therein, or performs in that other State independent personal services, and the technical fees are effectively connected with such permanent establishment or such services. In such case, the provisions of **Article 7** or **Article 15**, as the case may be, shall apply.

4. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying the technical fees, whether he is a resident of a Contracting State or not has in a Contracting State a permanent establishment in connection with which the obligation to pay the technical fees was incurred, and such technical fees are borne by such permanent establishment, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

5. 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 technical fees 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. In such case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Agreement.

Article 14

GAINS FROM THE ALIENATION OF PROPERTY

1. Gains from the alienation of immovable property, as defined in paragraph (2) of **Article 6**, may be taxed in the Contracting State in which such property is situated.

2. 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 available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) may be taxed in that other State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the alienator is a resident.

3. Gains from the alienation of any property or assets, other than those mentioned in paragraphs (1) and (2) of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

Article 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State. However, in the following circumstances such income may be taxed in the other Contracting State:

- (a) if his stay in the other State is for a period or periods amounting to or exceeding in the aggregate 183 days in the basis year or the relevant year of income, as the case may be; or
- (b) if the remuneration for his services in the other State is either derived from residents of that State or borne by a permanent establishment which a person not resident in that State has in that State and which, in either case exceeds seven thousand five hundred US dollars in the basis year or the relevant year of income, as the case may be, notwithstanding that his stay in that State is for a period or periods amounting to less than 183 days during such basis year or relevant year of income.

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

Article 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of **Articles 17, 19, 20, 21 and 22** 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), 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 Contracting State for a period or periods not exceeding in the aggregate 183 days in the basis year or the relevant year of income, as the case may be; 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 resident of the other Contracting State or a permanent establishment which the employer has in the other State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that State.

Article 17

DIRECTORS' FEES

Directors' fees and 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 18

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of **Articles 15** and **16** 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, 15** and **16**, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs (1) and (2) shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body thereof.

Article 19

PENSION AND ANNUITIES

1. Subject to the provisions of paragraph (2) of **Article 20**, any pension and other similar remuneration for past employment or any annuity arising in a contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "annuity" includes 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 20

GOVERNMENT SERVICE

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to Any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the recipient as a resident of that other State who:
 - (i) is a national of that other State, or
 - (ii) did not become a resident of that other State solely for the purpose of performing the services.

2. Any pension paid by, or out of funds created by, a Contracting State, a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State, political subdivision, local authority or statutory body thereof shall be taxable only in that State.

3. The provisions of **Articles 16, 17 and 19** shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision or a local authority or a statutory body thereof.

Article 21

STUDENTS AND TRAINEES

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State;
- (b) as a business or technical apprentice;
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the government of either State or from a scientific, educational, religious or charitable organisations or under a technical assistance programme entered into by the Government of either State;

shall be exempt from tax in that other State on:

- (i) all remittances from abroad for the purposes of his maintenance, education, study, research or training;
- (ii) the amount of such grant allowance or award; and
- (iii) any remuneration not exceeding two thousand five hundred US dollars per annum in respect of services in that other State provided the services are performed in connection with his study, research or training or are necessary for the purposes of his maintenance.

Article 22

TEACHERS AND RESEARCHERS

1. An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State, and who, at the invitation of any public university, college, Institution primarily for research purposes or other similar public educational institution, visits that other State for a period not exceeding two years solely for the purposes of teaching or research or both at such public educational institution shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

2. This Article shall not apply to income from teaching or research if such teaching or research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

Article 23

INCOME NOT EXPRESSLY MENTIONED

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Agreement shall be taxable only in that Contracting State except that if such income is derived from sources in the other Contracting State, it may also be taxed in that other State.

Article 24

ELIMINATION OF DOUBLE TAXATION

1. Subject to the laws of Malaysia regarding the allowance as a credit against Malaysian tax of tax payable in any country other than Malaysia, Fiji tax payable under the laws of Fiji and in accordance with this Agreement by a resident of Malaysia in respect of income derived from Fiji shall be allowed as a credit against Malaysian tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Fiji to a company which is a resident of Malaysia and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account Fiji tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Malaysian tax, as computed before the credit is given, which is appropriate to such item of income.

2. For the purposes of paragraph (1), the term "Fiji tax payable" shall include an amount equivalent to the amount of any tax forgone which, under the laws of Fiji and in accordance with this Agreement would have been payable as tax on income but for an exemption from, or a reduction of, tax on that income resulting from the operation of the special incentives under the laws of Fiji for the promotion of economic development of Fiji which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Fiji in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

3. Subject to the laws of Fiji regarding the allowance as a credit against Fiji tax of tax payable in any country other than Fiji, Malaysian tax payable under the laws of Malaysia and in accordance with this Agreement by a resident of Fiji in respect of income derived from Malaysia shall be allowed as a credit against Fiji tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Malaysia to a company which is a resident of Fiji and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account Malaysian tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Fiji tax, as computed before the credit is given, which is appropriate to such item of income.

4. For the purposes of paragraph (3), the term "Malaysian tax payable" shall be deemed to include Malaysian tax which would, under the laws of Malaysia and in accordance with this Agreement, have been payable on any income derived from sources in Malaysia had the income not been taxed at a reduced rate or exempted from Malaysian tax in accordance with the provisions of this Agreement and

- (a) the special incentives under the Malaysian laws for the promotion of economic development of Malaysia which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Malaysia in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character., and

- (b) interest to which paragraph (3) of **Article 11** applies had that interest not been exempted from Malaysian tax in accordance with that paragraph.

Article 25

NON-DISCRIMINATION

1. The 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.

3. 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 that first-mentioned State are or may be subjected.

4. Nothing in this Article shall be construed as obliging:

- (a) a Contracting State to grant to individuals who are resident of the other Contracting State any personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which it grants to its own residents; or
- (b) Malaysia to grant to nationals of Fiji not resident in Malaysia those personal allowance, reliefs and reductions for tax purposes which are by law available on the date of signature of this Agreement only to nationals of Malaysia who are not resident in Malaysia.

5. Nothing in this Article shall be construed so as to prevent either Contracting State from limiting to its nationals the enjoyment of tax incentives designed to promote economic development in that State.

6. In this Article, the term "taxation" means taxes to which this Agreement applies.

Article 26

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Agreement he may, notwithstanding the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which he is a resident or, if his case comes under paragraph (1) of **Article 25**, to that of the State of which he is a national. 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 the Agreement.

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 an appropriate 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. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

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

Article 27

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting State shall exchange such information as is necessary for carrying out the provisions of this Agreement or for the prevention or detection of evasion or avoidance of taxes covered by this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including a court or reviewing authority) concerned with the assessment collection, enforcement or prosecution in respect of or the determination of appeals in relation to, the taxes which are the subject of the Agreement. Such persons or authorities shall use the information only for such purposes.

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

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

Article 28

DIPLOMATIC AND CONSULAR OFFICIALS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Article 29

ENTRY INTO FORCE

This Agreement shall enter into force on the date on which the Contracting States exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Malaysia and in Fiji, as the case may be, and thereupon this Agreement shall have effect:

- (a) in Malaysia:
 - (i) in respect of withholding tax on income derived by a non-resident on or after the first day of January in the calendar year following the year in which this Agreement enters into force;

- (ii) in respect of other taxes on income, to taxes chargeable for year of assessment beginning on or after the first day of January of the second calendar year following the year in which this Agreement enters into force and subsequent years of assessment.
- (b) in Fiji:
in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after the first day of January in the calendar year immediately following that in which this Agreement enters into force.

Article 30

TERMINATION

This Agreement shall remain in effect indefinitely, but either Contracting State may terminate the Agreement, through diplomatic channels, by giving to the other Contracting State written notice of termination on or before June 30th in any calendar year after the period of five years from the date on which this Agreement enters into force. In such an event the Agreement shall cease to have effect:

- (a) in Malaysia:
 - (i) in respect of withholding tax on income derived by a non-resident on or after the first day of January in the calendar year following the year in which the notice is given;
 - (ii) in respect of other taxes on income, to taxes chargeable for any year of assessment beginning on or after the first day of January of the second calendar year following the year in which the notice is given.
- (b) in Fiji:
in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after the first day of January in the calendar year immediately following that in which the notice is given.

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

Done in duplicate at Kuala Lumpur this nineteenth day of December 1995, each in Bahasa Malaysia and the English Language, both texts being equally authentic. In the event of there being a dispute in the interpretation and the application of this Agreement, the English text shall prevail.

DATO SERI ANWAR IBRAHIM
for the Government of Malaysia

BERENADO VUNIBOBO
for the Government of the Republic of Fiji

NEW ZEALAND

LN 159/1976 [FRGS No. 48 3rd December 1976]
LN 159/1976 [FRGS No. 48 3rd December 1976] – First Protocol
LN 140/1986 [FRGS No. 52 30th December 1986] – Second Protocol
LN 43/1994 [FRGS No. 14 25th April 1994] – Third Protocol

DOUBLE TAXATION RELIEF ARRANGEMENTS WITH NEW ZEALAND

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The Government of Fiji, has made arrangements with the Government of New Zealand with a view to the prevention of the levying under the laws of Fiji and of New Zealand of income tax in respect of the same income and the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of Fiji and of New Zealand.

The arrangements so made are embodied in a Convention concluded on 27 October 1976, a copy of which is set out in the Schedule.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF FIJI AND THE GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of Fiji and the Government of New Zealand.

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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) The taxes which are the subject of this Agreement are:

- (a) in Fiji:
the income tax (including basic tax and normal tax, the non-resident dividend withholding tax, the interest withholding tax and the dividend tax);
- (b) in New Zealand:
the income tax and the excess retention tax.

(2) This Agreement shall also apply to any identical or substantially similar taxes which are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes by either Contracting State.

(3) For the purposes of paragraph (1)(b) of this Article the income tax does not include the bonus issue tax.

ARTICLE 3

GENERAL DEFINITIONS

- (1) In this Agreement, unless the context otherwise requires—
- (a) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies; and includes all areas of water which, in accordance with international law, have been, or may hereafter be, designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the seabed and its subsoil and the natural resources thereof;
 - (b) the term “New Zealand”, when used in a geographical sense, means the metropolitan territory of New Zealand (including the outlying islands) but does not include the Cook Islands, Niue or the Tokelau Islands; it also includes areas adjacent to the territorial sea of the metropolitan territory of New Zealand (including the outlying islands) which by New Zealand legislation and in accordance with international law have been, or may hereafter be, designated as areas over which New Zealand has sovereign rights for the purposes of exploring them or of exploring, exploiting, conserving and managing the natural resources of the sea, or of the seabed and subsoil;
 - (c) the terms “Contracting State”, “one of the Contracting States”, and “other Contracting State” mean Fiji or New Zealand, as the context requires;
 - (d) the term “person” includes any body of persons, corporate or not corporate;
 - (e) the term “Fiji tax” means tax imposed by Fiji being tax to which this Agreement applies by virtue of **Article 2**; the term “New Zealand tax” means tax imposed by New Zealand being tax to which this Agreement applies by virtue of **Article 2**;
 - (f) the term “tax” means Fiji tax or New Zealand tax, as the context requires;
 - (g) the term “competent authority” means, in the case of Fiji, the Commissioner of Inland Revenue or his authorised representative and, in the case of New Zealand, the Commissioner of Inland Revenue or his authorised representative;
 - (h) the term “natural resource royalties” means payments of any kind to the extent to which they are made as consideration for the use of, or the right to use, any mine or quarry, or as consideration for the extraction, removal or other exploitation of, or the right to, extract, remove or otherwise exploit, standing timber or any natural resource;
 - (i) the term “industrial or commercial profits” means profits derived by an enterprise of a Contracting State from the carrying on of a trade or business, but does not include—
 - (i) dividends, interest, royalties (as defined in **Article 11**), or natural resource royalties;
 - (ii) income from the sale or other disposition of land situated in the other Contracting State or of any estate or interest in land so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such land or any such estate or interest;
 - (iii) income from the grant or renewal, or from the sale or other disposition, of any right relating to the operation of any mine or quarry, situated in the other Contracting State or to the extraction, removal or other exploitation of any standing timber or of any natural resource so situated, or from the sale or other disposition of any share or comparable interest in a company or association whose assets consist wholly or principally of any such right; in this subparagraph (i) (iii), the term “right” means any right, licence, permit, authority,

- title, option, privilege or other concession and includes a share or interest in any right, licence, permit, authority, title, option, privilege or other concession;
- (iv) rent;
 - (v) profits from operating ships or aircraft;
 - (vi) remuneration or other income for personal (including professional) services;
 - (vii) income from the furnishing of services of employees or others by any person in the course of the carrying on by that person of a profession or vocation; or
 - (viii) charges for the bailment of livestock;
- (j) the terms “enterprise of a Contracting State” and “enterprise of other Contracting State” mean an enterprise carried on by a Fiji resident or an enterprise carried on by a New Zealand resident, as the context requires;
- (k) words in the singular include the plural and words in the plural include the singular.

(2) In determining, for the purposes of **Article 9, 10** or **11**, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

(3) In this Agreement, the terms “Fiji tax” and “New Zealand tax” do not include any amount which represents a penalty or interest imposed under the law of either Contracting State relating to the taxes to which this Agreement applies by virtue of **Article 2**.

(4) In the application of the provisions of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes to which this Agreement applies by virtue of **Article 2**.

ARTICLE 4

FISCAL DOMICILE

- (1) For the purposes of this Agreement—
- (a) the term “New Zealand resident” means a person who is resident in New Zealand for the purposes of New Zealand tax;
 - (b) the term “Fiji resident” means a person who is a resident of Fiji for the purposes of Fiji tax.
- (2) Where by reason of the provisions of paragraph (1) of this Article an individual is both a New Zealand resident and a Fiji resident then his status shall, for the purposes of this Agreement, be determined in accordance with the following rules—
- (a) he shall be deemed to be solely 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 solely a resident of the Contracting State with which his personal and economic relations are closest (hereinafter referred to as his 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 not a permanent home available to him in either Contracting State, he shall be deemed to be solely a resident of the Contracting State in which he has an habitual abode;

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- (c) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be solely 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 both a New Zealand resident and a Fiji resident then its status shall, for the purposes of this Agreement, be determined in accordance with the following rules—
- (a) it shall be treated solely as a New Zealand resident if the centre of its practical management is situated in New Zealand and solely as a Fiji resident if the centre of its practical management is situated in Fiji, whether or not any person outside New Zealand or Fiji, as the case may be, exercises or is capable of exercising any overriding control of it or of its policy or affairs in any way whatsoever; and
- (b) failing a resolution of the matter under sub-paragraph (a) of this paragraph, it shall be treated solely as a New Zealand resident if it is established by or under the laws of New Zealand and solely as a Fiji resident if it is established by or under the laws of Fiji.
- (4) For the purposes of this Article the term “national” means—
- (a) in relation to New Zealand, any individual who is a New Zealand citizen;
- (b) in relation to Fiji, any individual who is a Fiji citizen.
- (5) For the purposes of this Agreement, the terms “resident of a Contracting State” and “resident of the other Contracting State” means a person who is a New Zealand resident or a person who is a Fiji resident, as the context requires.

ARTICLE 5

PERMANENT ESTABLISHMENT

- (1) For the purposes of this Agreement the term “permanent establishment”, in relation to an enterprise, means a fixed place of trade or business in which the trade or business of the enterprise is wholly or partly carried on.
- (2) The term “permanent establishment” includes—
- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, quarry or other place of extraction of natural resources;
- (g) an agricultural, pastoral or forestry property; and
- (h) a building site or construction, installation or assembly project which exists for more than six months.
- (3) The term “permanent establishment” shall not be deemed 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 fixed place of trade or business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise; or
 - (d) the maintenance of a fixed place of trade or business solely for the purpose of activities which have a preparatory or auxiliary character for the enterprise, such as advertising or scientific research.
- (4) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if—
- (a) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken, in that other Contracting State; or
 - (b) substantial equipment is in that other Contracting State being used or installed by, for or under contract with the enterprise.
- (5) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State (other than an agent of independent status to whom paragraph (7) of this Article applies) shall be deemed to be a permanent establishment of that enterprise in the first-mentioned Contracting State if—
- (a) he has, and habitually exercises in that first-mentioned Contracting State, an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise;
 - (b) there is maintained in that first-mentioned Contracting State a stock of goods or merchandise belonging to the enterprise from which he habitually fills orders on behalf of the enterprise; or
 - (c) in so acting he carries out in that first-mentioned Contracting State activities of any of the kinds referred to in sub-paragraph (a)(i) or sub-paragraph (a)(ii) or sub-paragraph (a)(iii) of paragraph (6) of this Article.
- (6) In any case where paragraph (5) of this Article does not apply, an enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if—
- (a) for, or at or to the order of, that enterprise, another enterprise-
 - (i) manufactures, assembles, processes, packs or distributes in that other Contracting State any goods or merchandise;
 - (ii) performs, in that other Contracting State, any mining or quarrying operations or any operations carried on in association with mining or quarrying operations, or performs, in that other Contracting State, any operations for the extraction, removal or other exploitation of standing timber or of any natural resources; or
 - (iii) breeds, manages, agists or raises in, that other Contracting State any livestock; and
 - (b) either enterprise participates directly or indirectly in the management, control or capital of the other enterprises, or the same persons participate directly or indirectly in the management, control or capital of both enterprises.
- (7) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on trade or business in that other Contracting State through a broker, a general commission agent or any other agent of independent status, where

such a person is acting in the ordinary course of his business as a broker, a general commission agent or other agent of independent status.

(8) 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 trade or business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute a place of business of either company a permanent establishment of the other.

ARTICLE 6

INDUSTRIAL OR COMMERCIAL PROFITS

(1) Industrial or commercial profits of an enterprise of a Contracting State shall be subject to tax only in that Contracting State unless the enterprise carries on trade or business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on trade or business as aforesaid, tax may be imposed by that other Contracting State on the whole of the industrial or commercial profits of the enterprise from sources within that other Contracting State whether or not those profits are attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on trade or business in the other Contracting State 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 make 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; and the profits so attributed shall be deemed to be income derived from sources in that other Contracting State and shall be taxed accordingly.

(3) In determining the industrial or commercial profits attributable to a permanent establishment in a Contracting State, there shall be allowed as deductions all expenses of the enterprises, including executive and general administrative expenses, which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the permanent establishment, whether incurred in the Contracting State in which the permanent establishment is situated or elsewhere.

(4) If the information available to the competent authority of the Contracting State concerned is inadequate to determine the industrial or commercial profits to be attributed to the permanent establishment, nothing in this Article shall affect the application of the law of that Contracting State in relation to the liability of the enterprise to pay tax in respect of the permanent establishment on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.

(5) Industrial or commercial profits shall not be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) Nothing in this Article shall apply to either Contracting State to prevent the operation in the Contracting State of any provisions of its law at any time in force relating to the taxation of any income from the business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Agreement relating to the taxation of that income is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult with each other with a view to agreeing to such amendment of this paragraph as may be appropriate.

ARTICLE 7

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 operative between the two enterprises in their commercial or financial relations which differ from those which might be expected to operate between independent enterprises dealing at arm's length, then any profits which, but for those conditions, might have been expected to accrue to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise.

(2) Profits included in the profits of an enterprise of a Contracting State under paragraph (1) of this Article shall be deemed to be income of that enterprise derived from sources in that Contracting State and shall be taxed accordingly.

(3) If the information available to the competent authority of a Contracting State is inadequate to determine, for the purposes of paragraph (1) of this Article the profits which might have been expected to accrue to an enterprise, nothing in this Article shall affect the application of any law of that Contracting State in relation to the liability of that enterprise to pay tax on an amount determined by the exercise of a discretion or the making of an estimate by the competent authority of that Contracting State. Provided that the discretion shall be exercised or the estimate shall be made, so far as the information available to the competent authority permits, in accordance with the principle stated in this Article.

ARTICLE 8

SHIPPING AND AIR TRANSPORT

(1) A resident of a Contracting State shall, subject to paragraphs (2), (3) and (4) of **Article 6** and to **Article 7**, be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than operations confined solely to places in that other Contracting State.

(2) The exemption provided in paragraph (1) of this Article shall apply in relation to the share of the profits from the operation of ships or aircraft derived by a resident of a Contracting State through participation in a pool service in a joint transport operating organisation or in an international operating agency but only to the extent to which the share of the profits is not attributable to profits from voyages, flights or operations confined solely to places in the other Contracting State.

(3) For the purposes of this Article and **Article 20**, profits derived from the carriage of passengers, livestock, mails, goods or merchandise shipped in a Contracting State for discharge at another place in that Contracting State shall be treated as profits from the operation of a ship or aircraft confined solely to places in that Contracting State.

(4) If the mode of operation of ships or aircraft by residents of either of the Contracting States at the date of signature of this Agreement is subsequently so changed that either of the Contracting Governments considers that the wording of the Article should be reviewed, the Contracting

Governments shall consult with each other with a view to deciding whether any modification of this Article is desirable.

ARTICLE 9¹

DIVIDENDS

(1) Dividends paid by a company which is a Fiji resident to a person who is a New Zealand resident may be taxed in New Zealand. However, such dividends may be taxed in Fiji and according to the law of Fiji, but, where that person is the beneficial owner of the dividends, the amount of Fiji tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(2) Dividends paid by a company which is a New Zealand resident to a person who is a Fiji resident may be taxed in Fiji. However, such dividends may be taxed in New Zealand and according to the law of New Zealand, but, where that person is the beneficial owner of the dividends, the amount of New Zealand tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) The limitation on the amount of tax for which paragraphs (1) and (2) of this Article provide shall not apply if the person who is the beneficial owner of the dividends being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the holding giving rise to the dividends is effectively connected with that permanent establishment. In such a case, the dividends may be taxed in that other Contracting State in accordance with the law of that other Contracting State.

(4) Dividends paid by a company which is a resident of a Contracting State, being dividends which are derived and beneficially owned by a person who is not a resident of the other Contracting State, shall be exempt from tax in that other Contracting State.

ARTICLE 10²

INTEREST

(1) Interest derived from sources within a Contracting State by a person who is a resident of the other Contracting State may be taxed in that other Contracting State. However, such interest may be taxed in that first-mentioned Contracting State and according to the law of that State, but, where that person is the beneficial owner of the interest, the amount of tax so charged shall not exceed 10 per cent of the gross amount of the interest.

(2) The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the indebtedness giving rise to the interest is effectively connected with that permanent establishment. In such a case, the interest may be taxed in that other Contracting State in accordance with the law of that other Contracting State.

(3) The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the interest, being a resident of a Contracting State, and the person paying the interest are associated with each other. In such a case, the interest may be taxed in the other Contracting State in accordance with the law of the other Contracting State. For the purposes of this paragraph a person is associated with another person if either person controls directly or indirectly the other or if the same persons control directly or indirectly both. For this purpose the

¹ Article 9 subject to First Protocol to the Agreement, LN 159/1976

² Article 10 subject to Second Protocol to the Agreement, LN 140/1986

term “control” includes any kind of control, whether or not legally enforceable, and however exercised or exercisable.

(4) Where the application of the limitation on the amount of tax for which paragraph (1) of this Article provides is not excluded by virtue of the foregoing provisions of this Article, but, owing to a special relationship between the person paying the interest and the person who is the beneficial owner of the interest, or between both of them and some other person, the amount of the interest paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (1) of this Article provides shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State.

ARTICLE 11

ROYALTIES

(1) Royalties derived from sources within a Contracting State by a person who is a resident of the other Contracting State may be taxed in that other Contracting State. However, such royalties may be taxed in that first-mentioned Contracting State and according to the law of that State, but, where that person is the beneficial owner of the royalties, the amount of tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

(2) The term “royalties” in this Article means payments of any kind to the extent to which they are made as consideration for—

- (a) the use of or the right to use any—
 - (i) copyright, patent, design or model, plan, secret formula or process, trade-mark, or other like property or right;
 - (ii) industrial, agricultural, commercial or scientific equipment;
 - (iii) motion picture films; or
 - (iv) films or video tapes for use in connection with television or tapes for use in connection with radio broadcasting;
- (b) the supply of—
 - (i) scientific, technical, industrial or commercial knowledge or information;
 - (ii) any assistance which is given as a means of enabling the application or enjoyment of such knowledge or information; or
- (c) the supply by a resident of a Contracting State of management services in the other Contracting State, but does not include natural resource royalties.

(3) The limitation on the amount of tax for which paragraph (1) of this Article provides shall not apply if the person who is the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the knowledge, information, assistance, right or property giving rise to the royalties is effectively connected with that permanent establishment. In such a case, the royalties may be taxed in that other Contracting State in accordance with the law of that other Contracting State.

(4) Where the application of the limitation on the amount of tax for which paragraph (1) of this Article provides is not excluded by virtue of paragraph (3) of this Article but owing to a special relationship between the person paying the royalties and the person who is the beneficial owner of the royalties, or between both of them and some other person, the amount of the royalties paid exceeds the amount which might have been expected to have been agreed upon in the absence of such relationship, the limitation on the amount of tax for which paragraph (1) of this Article provides shall

apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State.

ARTICLE 12

PERSONAL SERVICES

(1) Subject to **Articles 15, 17 and 18**, remuneration or income (other than pensions) derived by an individual who is a resident of a Contracting State in respect of personal (including professional) services shall be subject to tax only in that Contracting State unless the services are performed in the other Contracting State. If the services are so performed, such remuneration or income as is derived in respect thereof shall be deemed to have a source in, and may be subjected to tax in, that other Contracting State.

(2) Notwithstanding paragraph (1) of this Article, remuneration (other than pensions) derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be exempt from tax in that other Contracting State if—

- (a) the recipient is present in that other Contracting State for a period or periods not exceeding in the aggregate 183 days in the income year of that other Contracting State; and
- (b) the remuneration is paid by or on behalf of an employer who is not a resident of that other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment which that employer has in that other Contracting State; and
- (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned Contracting State.

(3) Notwithstanding paragraphs (1) and (2) of this Article, remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State may be subjected to tax in that Contracting State. For the purposes of this paragraph, the term “international traffic” includes traffic between places in one country in the course of a voyage which extends over more than one country.

ARTICLE 13

DIRECTORS' FEES

Notwithstanding anything contained in **Article 12**, directors' fees and 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 shall be deemed to have a source in, and may be taxed in, that other Contracting State.

ARTICLE 14

PUBLIC ENTERTAINERS AND ATHLETES

(1) Notwithstanding anything contained in **Article 12**, remuneration or income derived by public entertainers (such as theatrical, motion picture, radio or television artistes and musicians) and by athletes from their personal activities as such shall be deemed to have a source in, and may be subjected to tax in, the Contracting State in which these activities are exercised.

(2) An enterprise of a Contracting State shall be deemed to have a permanent establishment in the other Contracting State and to carry on trade or business through that permanent establishment if it provides the services of a public entertainer or athlete referred to in paragraph (1) of this Article in that other Contracting State.

ARTICLE 15

GOVERNMENTAL FUNCTIONS

(1) Remuneration (other than pensions) paid by the Government of Fiji to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from New Zealand tax if the individual is not resident in New Zealand for the purposes of New Zealand tax or is resident in New Zealand for the purposes of New Zealand tax solely for the purpose of rendering those services.

(2) Remuneration (other than pensions) paid by the Government of New Zealand to an individual for services rendered to that Government in the discharge of governmental functions shall be exempt from Fiji tax if the individual is not a resident of Fiji for the purposes of Fiji tax or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of rendering those services.

(3) Paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either Government for the purposes of profit.

ARTICLE 16

NEW ZEALAND GOVERNMENT'S BILATERAL AID TO FIJI

Notwithstanding anything elsewhere in this Agreement, income derived by any person from the participation in any capacity whatsoever of that person in the New Zealand Government's Bilateral Aid Programme to Fiji shall be exempt from Fiji tax if—

- (a) that person is not a resident of Fiji for the purposes of Fiji tax or is a resident of Fiji for the purposes of Fiji tax solely for the purpose of such participation; and
- (b) that income is subject to tax in New Zealand.

ARTICLE 17

PROFESSORS AND TEACHERS

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who immediately before that visit was a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is or upon the application of this Article will be, subject to tax in the other Contracting State.

ARTICLE 18

STUDENTS AND TRAINEES

A student or trainee who is, or was immediately before visiting a Contracting State, a resident of the other Contracting State and is present in the first-mentioned Contracting State solely for the purpose of his education or training shall not be taxed in that first-mentioned Contracting State on

payments (including salary or wages) to the extent to which he receives such payments for the purpose of his maintenance, education or training provided that such payments are made to him from outside that first-mentioned Contracting State.

ARTICLE 19

DUAL RESIDENCE

(1) This Article shall apply to a person who is a resident of Fiji for the purposes of Fiji tax and is also resident in New Zealand for the purposes of New Zealand tax.

(2) Where such a person is treated for the purposes of this Agreement solely as a resident of a Contracting State he shall be exempt in the other Contracting State from tax on income other than income which, under the law of that other Contracting State or under this Agreement, is derived, or is deemed to be derived, from sources in that other Contracting State.

ARTICLE 20

ELIMINATION OF DOUBLE TAXATION

(1) Subject to any provisions of the law of Fiji which may from time to time be in force and which relate to the allowance of a credit against Fiji tax of tax paid in a country outside Fiji (which shall not effect the general principle hereof), New Zealand tax paid under the law of New Zealand and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a Fiji resident from sources in New Zealand (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Fiji tax payable in respect of that income.

(2)³ Subject to any provisions of the law of New Zealand which may from time to time be in force and which relate to the allowance of a credit against New Zealand tax of tax paid in a country outside New Zealand (which shall not affect the general principle thereof), Fiji tax paid under the law of Fiji and consistently with this Agreement, whether directly or by deduction, in respect of income derived by a New Zealand resident from sources in Fiji (excluding, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against New Zealand tax payable in respect of that income.

(3)⁴ For the purposes of paragraph (2) of this Article the term Fiji tax paid shall be deemed to include any amount which would have been payable as Fiji tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

- (a) any of the following provisions, that is to say—
- (i) Section **16(2)(a), (b) and (d)**, Section **8(6)(c)** and Section **9(3)(h)** of the Income Tax Act; and
 - (ii) Section **8(1)** of the Hotels Aid Act⁵.

Provided that relief is given for the same year under either section **16(2)(a)** or section **16(2)(b)** of the Income Tax Act or section **8(1)** of the Hotels Aid Act, 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; or

³ Subject to Third Protocol, LN 43/1994

⁴ Subject to Third Protocol, LN 43/1994

⁵ Cap. 215

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- (b) any other provisions which may subsequently be made granting an exemption or reduction which is agreed, in an Exchange of Letters between 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;
- (4) For the purposes of this Article—
- (a) (i) New Zealand tax borne by a Fiji resident in respect of dividends paid by a company which is a New Zealand resident shall be treated as tax in respect of income from sources in New Zealand;
- (ii) Fiji tax borne by a New Zealand resident in respect of dividends paid by a company which is a Fiji resident shall be treated as tax in respect of income from sources in Fiji.
- (b) interest, royalties, (as defined in **Article 11**) and natural resource royalties which are derived by a resident of a Contracting State and which under the law of the other contracting State—
- (i) are derived from sources in that other Contracting State; or
- (ii) being derived by a non-resident are subject to withholding tax, shall be treated in the first-mentioned Contracting State as having a source in that other Contracting State;
- (c) remuneration in respect of services performed aboard a ship or aircraft operated in international traffic by a resident of a Contracting State shall be treated as having a source in that Contracting State;
- (d) profits derived by a resident of a Contracting State from the operations of ships or aircraft, being profits from operations confined solely to places in the other Contracting State, shall be treated as having a source in that other Contracting State;
- (e) an amount which, for the purposes of tax in a Contracting State, is included in the taxable income of a person who is a resident of the other Contracting State and which is so included under any provision of the law of the first-mentioned Contracting State for the time being in force relating to the taxation of any income from the business of any form of insurance shall be treated as having a source in that first-mentioned Contracting State,
- (f) income referred to in paragraph (ii), (iii), or (iv) of the definition of “industrial or commercial profits” in sub-paragraph (i) of paragraph (1) of **Article 3** shall be treated as having a source in the Contracting State in which the land, mine, quarry, standing timber, natural resource or rent-producing property is situated.
- (5) Where profits, on which an enterprise of a Contracting State has been charged to tax in that Contracting State, are also included in the profits of an enterprise of the other Contracting State as being profits which, because of the conditions operative between the two enterprises, might have been expected to accrue to the enterprise of that other Contracting, State if the enterprises had been independent enterprises dealing at arm’s length, the profits so included shall be treated for the purposes of this Article as profits of the enterprise of the first-mentioned Contracting State from a source in that other Contracting State and credit shall be given in accordance with this Article in respect of the extra tax chargeable in that other Contracting State as a result of the inclusion of such profits.

ARTICLE 21⁶

MUTUAL AGREEMENT PROCEDURE

(1) Where a taxpayer considers that the action of the competent authority in a Contracting State has resulted, or is likely to result, in double taxation contrary to the provisions of this Agreement, he shall be entitled to present the facts to the competent authority in the Contracting State of which he is a resident and, should the taxpayer's claim be deemed worthy of consideration, the competent authority in that Contracting State shall endeavour to come to an agreement with the competent authority in the other Contracting State with a view to the avoidance of the double taxation in question.

(2) The competent authority in a Contracting State may communicate directly with the competent authority in the other Contracting State for the purpose of giving effect to the provisions of this Agreement and, in an endeavour to assure its consistent interpretation and application.

ARTICLE 22

EXCHANGE OF INFORMATION

(1) The competent authorities shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for carrying out the provisions of this Agreement or for the prevention of fraud or for the administration of statutory provisions against avoidance of the taxes to which this Agreement applies by virtue of **Article 2**.

(2) Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those (including a Court or reviewing authority) concerned with the assessment or collection of the taxes to which this Agreement applies by virtue of Article 2, or the determination of appeals in relation thereto.

(3) No information shall be exchanged which would disclose any trade secret or trade process.

(4) A competent authority shall not be obliged by this Article to disclose to the other competent authority any information which does not relate directly to the affairs of a taxpayer with whom the other competent authority is concerned.

ARTICLE 23

ENTRY INTO FORCE

(1) This Agreement shall come into force on the date on which the last of all such things shall have been done in Fiji and New Zealand as are necessary to give the Agreement the force of law in Fiji and New Zealand so far as its provisions affect Fiji tax and New Zealand tax respectively, and shall thereupon have effect—

- (a) in Fiji—
in relation to Fiji tax, in respect of income derived during any income year beginning on or after 1st January, 1976;
- (b) in New Zealand—
in relation to New Zealand tax, in respect of income derived during any income year beginning on or after 1st April, 1976.

⁶ see Third Protocol, LN 43/1990

(2) The Contracting States shall, as soon as possible, inform one another in writing when the last of all such things shall have been done as are necessary to give the Agreement the force of law in the respective Contracting States.

ARTICLE 24

TERMINATION

This Agreement shall continue in effect indefinitely, but either Contracting State may, on or before 30th June in any calendar year after the year 1979 give to the other Contracting State notice of termination and, in that event, this Agreement shall cease to be effective—

- (a) in Fiji—
in relation to Fiji tax, in respect of income derived during any income year beginning on or after 1st January in the calendar year next following that in which the notice is given;
- (b) in New Zealand—
in relation to New Zealand tax, in respect of income derived during any income year beginning on or after 1st April in the calendar year next following that in which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto have signed this Agreement.

Done at Wellington in duplicate this twenty-seventh day of October, one thousand nine hundred and seventy-six in the English language.

C. A. STINSON,
For the Government
of
Fiji

P. I. WILKINSON,
For the Government
of
New Zealand

PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF FIJI AND THE
GOVERNMENT OF NEW ZEALAND FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES OF INCOME.

The Government of Fiji and the Government of New Zealand have agreed that the following provision shall form an integral part of the Agreement in connection with **Articles 9 and 20**:

For the purposes of **Articles 9 and 20**, every reference to dividends paid shall include a reference to dividends distributed, credited, or dealt with in the interest of or on behalf of a person, and shall also include a reference to dividends deemed to have been distributed under the laws of a Contracting State.

This Protocol shall enter into force on the same date as the Agreement.

Done at Wellington in duplicate this twenty-seventh day of October, one thousand nine hundred and seventy-six in the English language.

C. A. STINSON,
For the Government
of Fiji

P. I. WILKINSON,
For the Government
of New Zealand

INCOME TAX ACT
(CHAPTER 201)

DOUBLE TAXATION RELIEF (NEW ZEALAND)
ARRANGEMENTS

SECOND PROTOCOL TO AGREEMENT

Notification is hereby given that the Government of Fiji has, pursuant to **section 106** of the Income Tax Act, entered into a Second Protocol to the Agreement between the Government of Fiji and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, concluded on 27th October 1976.

A copy of the text of the protocol, done at Suva on the 15th December 1986, is set out in the Schedule.

Dated this 24th day of December 1986.

Deputy Prime Minister and
Minister of Finance

SCHEDULE

SECOND PROTOCOL TO AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND
AND THE GOVERNMENT OF FIJI FOR THE AVOIDANCE OF DOUBLE TAXATION AND
THE PREVENTION OF FISCAL, EVASION WITH RESPECT TO TAXES ON INCOME

The Government of New Zealand and the Government Fiji

Desiring to conclude a second Protocol to the Agreement between the Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Wellington on 27 October 1976, (hereinafter referred to as "the Agreement"),

Have agreed as follows:

Article I

Notwithstanding the provisions of **Article 10** of the Agreement, interest derived and beneficially owned by the Reserve Bank of a Contracting State and which has its source in the other Contracting State, shall be exempt from tax in that other Contracting State.

Article II

1. The Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Protocol have been complied with.
2. The Protocol shall enter force on the later of the notifications referred to in paragraph 1 and its provisions shall have effect:

- (a) in Fiji:
in respect of interest derived during any income year beginning on or after 1 January in the calendar year next following the date on which the Protocol enters into force;
- (b) in New Zealand:
in respect of interest derived during any income year beginning on or after 1 April in the calendar year next following the date on which the Protocol enters into force;

IN WITNESS WHEREOF the undersigned duly authorised thereto have signed this Protocol.

DONE in duplicate at Suva this fifteenth day of December 1986 in the English language.

For the Government
of New Zealand:

N. J. HURLEY

For the Government
of Fiji:

K. K. T. MARA

INCOME TAX ACT
(CHAPTER 201)

DOUBLE TAXATION RELIEF (NEW ZEALAND)
ARRANGEMENT THIRD PROTOCOL TO AGREEMENT

NOTIFICATION is hereby given that the Government of the Republic of Fiji has, pursuant to Section 106 of the Income Tax Act, entered into a Third Protocol to the Agreement between the Government of the Republic of Fiji and the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, concluded on 27 October 1976.

A copy of the text of the protocol, done at Suva on 14 April 1994, is set out in the Schedule.

Dated this 21st day of April 1994.

PAUL F. MANUELI
Minister of Finance & Public Enterprises

SCHEDULE

THIRD PROTOCOL TO THE AGREEMENT BETWEEN THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF THE REPUBLIC OF FIJI FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of New Zealand and the Government of the Republic of Fiji,

Desiring to conclude a Third Protocol to the Agreement between the Government of New Zealand and the Government of the Republic of Fiji for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income done at Wellington on 27 October 1976, (hereinafter referred to as "the Agreement"),

Have agreed that the following provisions shall form an integral part of the Agreement:

ARTICLE 1

Subject to **Article 21** of the Agreement, a New Zealand resident deriving income from Fiji, being income referred to in paragraph (2) of **Article 20** of the Agreement shall not be entitled to the benefit of paragraph (3) of **Article 20** where the competent authority of New Zealand considers, after consultation with the competent authority of Fiji, that the benefit is inappropriate, having regard to:

- (a) whether any arrangements have been entered into by any person for the purpose of taking advantage of paragraph (3) of **Article 20** for the benefit of that person or any other person;
- (b) whether any benefit is or may accrue to a person who is neither a New Zealand resident nor a Fiji resident;
- (c) the prevention of fraud or the avoidance of the taxes to which the Agreement applies;
- (d) any other matter which either competent authority considers relevant in the particular circumstances of the case, including any submissions from the New Zealand resident concerned.

ARTICLE 2

Article 1 of this Third Protocol shall apply to income derived on or after 1 March 1994.

ARTICLE 3

- (1) The Contracting States shall notify each other through diplomatic channels that the constitutional requirements for the entry into force of this Third Protocol have been complied with.
- (2) This Third Protocol shall enter into force on the date of the later of the notifications referred to in paragraph (1) of this Article.

Done at Suva in duplicate this 14th day of April 1994 in the English language.

DONALD MACKAY
For the Government of
New Zealand

SITIVENI L. RABUKA
For the Government of
the Republic of Fiji

U PAPUA NEW GUINEA

LN 94/1998 [FRGS No. 29 10th July 1998]

INCOME TAX ACT
(CHAPTER 201)

FIJI/PAPUA NEW GUINEA DOUBLE TAXATION AGREEMENT

THE Government of the Republic of Fiji has made arrangements with the Government of the Independent State of Papua New Guinea with a view to the prevention of the levying under the laws of Fiji and of Papua New Guinea of income tax in respect of the same income, and rendering of reciprocal assistance in the administration of, and the collection of taxes under the income tax laws of Fiji and of Papua New Guinea.

The arrangements so made are embodied in an Agreement concluded on 29 April 1998, a copy of which is set out in the Schedule.

Dated this 12th day of June 1998.

J. M. AH KOY
Minister of Finance

SCHEDULE

AGREEMENT BETWEEN THE REPUBLIC OF FIJI AND THE INDEPENDENT STATE OF
PAPUA NEW GUINEA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The Government of the Republic of Fiji and the Government of the Independent State of Papua New Guinea,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

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 imposed by a Contracting State, irrespective of the manner in which they are levied.

2. The taxes which are the subject of this Agreement are:

(a) in the case of Fiji:

- (i) the income tax (including normal tax, the non-resident dividend withholding tax, the interest withholding tax, royalty withholding tax and the dividend tax); and
 - (ii) land sales tax;
- (hereinafter referred to as “Fiji tax”).
- (b) in the case of Papua New Guinea:
the income tax imposed under the law of Papua New Guinea, including:
- (i) the salary or wages tax;
 - (ii) the additional profits tax upon additional profits from mining operations;
 - (iii) the additional profits tax upon additional profits from petroleum operations;
 - (iv) the additional profits tax upon additional profits from gas operations;
 - (v) the dividend withholding tax upon taxable dividend income;
 - (vi) the foreign contractor withholding tax;
 - (vii) the management fee withholding tax; and
 - (viii) the business payments tax;
- (hereinafter referred to as “Papua New Guinea tax”)

3. 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 taxes of that Contracting State referred to in paragraph 1 of this Article. The competent authorities of the Contracting States shall notify each other of any substantial changes which are made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Agreement, unless the context otherwise requires:
- (a) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies, the airspace above it and all area of water which, consistently with international law, have belts, or may hereafter be designated under the laws of Fiji as area over which the sovereignty of Fiji may be exercised with respect to the sea, the seabed and its subsoil and the natural resources thereof;
 - (b) the term “Papua New Guinea” means the Independent State of Papua New Guinea and, when used, in a geographical sense, includes any area adjacent to territorial limits of Papua New Guinea in respect of which there is for the time being in force, consistent with international law, a law of Papua New Guinea dealing with the exploitation of any of the natural resources of the Continental Shelf, its sea bed and sub-soil;
 - (c) the terms “a Contracting State”, “one of the Contracting States” and “the other Contracting State” mean Fiji or Papua New Guinea as the context requires;
 - (d) the term “person” includes an individual, a company and any other body of persons which is treated as a person for tax purposes;
 - (e) the term “company” means any body corporate or any entity which is treated as a company or body corporate for tax purposes;
 - (f) the terms “enterprise of a contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
 - (g) the term “tax” means Fiji tax or Papua New Guinea tax as the context requires;
 - (h) the term “national” means:
 - (i) any individual possessing the nationality or citizenship of a Contracting State;

- (ii) any legal person, partnership, association or any other entity deriving its status as such from the laws in force in a Contracting State;
- (i) 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;
- (j) the term “competent authority” means:
 - (i) in the case of Fiji, the Commissioner of Inland Revenue or his authorised representative; and
 - (ii) in the case of Papua New Guinea, the Commissioner General of Internal Revenue or an authorised representative of the Commissioner General of Internal Revenue.

2. In determining, for the purposes of **Articles 10, 11 or 12**, whether dividends, interest or royalties are beneficially owned by a resident of a Contracting State, dividends, interest or royalties in respect of which a trustee is subject to tax in that Contracting State shall be treated as being beneficially owned by that trustee.

3. In this Agreement the terms “Fiji tax” and “Papua New Guinea tax” do not include any amount which represents a penalty or penal interest imposed under the law of either Contracting State relating to the taxes to which this agreement applies.

4. In the application of this Agreement by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the, subject of this Agreement.

ARTICLE 4

RESIDENT

1. For the purposes of this Agreement, the term “resident of a Contracting State” means:
 - (a) in the case of Fiji a person who is resident in Fiji for the purposes of Fiji tax; and
 - (b) in the case of Papua New Guinea a person who is resident in Papua New Guinea for the purposes of Papua New Guinea tax.
2. Where by reason of the provisions of paragraph 1 a person, being an individual, is a resident of both Contracting States, then the status of that person shall be determined in accordance with the following rules:
 - (a) the person shall be deemed to be a resident of the Contracting State in which the person has a permanent home;
 - (b) if a permanent home is available to the person in both States, or in neither of them, the person shall be deemed to be a resident of the State with which the person’s personal and economic relations are the closer (centre of vital interests);
 - (c) if the Contracting State in which the person’s centre of vital interests cannot be determined, and the person has no permanent home in either State, the person shall be deemed to be a resident of the State in which the person has an habitual abode;
 - (d) if the person has an habitual abode in both Contracting States or in neither of them, the person shall be deemed to be a resident of the State of which the person is a national;

- (e) if the person is a national of both Contracting States or is a national of neither Contracting State, the competent authorities of the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States then its residence shall be determined in accordance with the following rules:

- (a) it shall be deemed to be a resident of the State in which its place of effective or practical management is located;
- (b) if it is not possible to determine its place of effective or practical management, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

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” shall include 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 including timber or other forestry products;
- (g) an installation or structure used for the exploration or exploitation of natural resources;
- (h) a farm, plantation or other place where agricultural, forestry, pastoral, plantation or other related activities are carried on; and
- (i) a building site, or a construction, installation or assembly project which exists for more than 120 days in any 365 day period.

3. An enterprise shall be deemed to have a permanent establishment in one of the Contracting States and to carry on business through that permanent establishment if:

- (a) it carries on supervisory activities in that State for more than 120 days in any 365 day period in connection with a building site, or a construction, installation or assembly project which is being undertaken in that State;
- (b) substantial equipment is being used in that Contracting State by, for or under a contract with the enterprise; or
- (c) services are furnished in that State, including consultancy services through employees or other personnel engaged by the enterprise for such purposes, and those activities continue for the same or a connected project within that State for a period or periods aggregating more than 120 days in any 365 day period.

4. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

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

5. A person (other than a broker, general commission agent or any other agent of independent status to whom paragraph 6 applies) acting in a Contracting State on behalf of an enterprise of the other Contracting State shall be deemed to be a permanent establishment in the first-mentioned State if:

- (a) the person has, and habitually exercises in the first-mentioned State, an authority to conclude contracts in the name of the enterprise, unless the person's activities are limited to the purchase of goods or merchandise for the enterprise;
- (b) the person maintains in the first-mentioned State a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise; or
- (c) the person manufactures, assembles, processes, packs or distributes in the first-mentioned State for the enterprise goods or merchandise belonging to the enterprise.

6. An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other 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.

However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he shall not be considered an agent of an independent status if the transactions between the agent and the enterprise were not made under arm's length conditions.

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 REAL PROPERTY

1. Income derived by a resident of a Contracting State from real property situated in the other Contracting State may be taxed in that other State.

2. For the purposes of this Agreement, the term “real property” shall be defined in accordance with the laws of the Contracting State in which the Property in question is situated. The term shall in any case include property Accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, *usufruct* of real property and rights to variable or fixed payments as consideration for the working of, or the right to work or the right to explore for, mineral deposits, oil or gas deposits, quarries and other places of extracting of natural resources including indigenous and exotic timber or other forest produce. Ships, boats and aircraft shall not be regarded as real property.

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

4. The provisions of paragraphs 1 and 3 shall also apply to the income from real property of an enterprise and to income from real 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:

- (a) that permanent establishment; or
- (b) sales within that other Contracting State of goods or merchandise of the same or a similar kind as those sold through that permanent establishment; or
- (c) other business activities carried on in that other State of the same or similar kind as those effected through that permanent establishment.

2. Subject to the provisions of paragraph 3, 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 independent 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 an allocation of executive and general administrative expenses incurred for the purposes of the enterprise as a whole, whether in the 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. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person in cases where the information available to the competent authority of that State is inadequate to determine the profits to be attributed to a permanent establishment, provided that the law shall be applied, so far as the information available to the competent authority permits, consistent with the principles of this Article.

6. Where profits include items of income 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.

7. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the *swne* method year by year unless there is good and sufficient reason to the contrary.

8. Nothing in this Article shall affect the operation of:

- (a) any law of a Contracting State relating to tax imposed on profits from insurance with non-residents; or
- (b) the law of Papua New Guinea relating to the taxation of income derived by a foreign contractor from a prescribed contract, where, in accordance with this Agreement, that contractor is a resident of Fiji with a permanent establishment in Papua New Guinea.

provided that if the relevant law in force in either Contracting State at the date of signature of this Agreement is varied (other than in minor respects so as not to affect its general character) the Contracting States shall consult with each other with a view to agreeing to any amendment of this paragraph that may be appropriate.

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. Profits derived by an enterprise of a Contracting State from containers in the course of a business principally consisting of the operation of ships shall be taxable only in that State except in a case where the containers are shipped in the other Contracting State for delivery in that State. In that case the profits of the enterprise from the containers for the period for which the containers are so shipped may be taxed in that other State.

3. For the purposes of paragraph 2 profits are derived from containers if the profits are derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport or storage of livestock, mail, goods or merchandise.

4. Profits derived by an enterprise of a Contracting State from a contract which provides for the rental of a ship on a bareboat basis in the course of a business principally consisting of the operation of ships for the carriage of passengers, livestock, mail, goods or,merchandise shall be taxable only in that State except where the profits are derived from a contract under which the ship is used wholly or mainly in the other Contracting State. If the ship is so used the profits from that contract may be taxed in that State.

5. Where an enterprise of a Contracting State derives profits from participation in a pool, a joint venture or an international operating agency, the provisions of this Article shall apply to those profits to the extent that they would have applied had the activities carried on jointly been undertaken exclusively by the enterprise.

6. The term “operation of ships or aircraft” shall mean the business of transportation by sea or air of passengers, mail, livestock or goods carried on by the owners or lessees or charterers of ships or aircraft and the incidental lease of ships or aircraft.

ARTICLE 9

ASSOCIATED ENTERPRISES

1. Where:

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

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

2. Nothing in this Article shall affect the application of any law of a Contracting State relating to the determination of the tax liability of a person, including determinations in cases where the information available to the competent authority of that State is inadequate to determine the income to be attributed to an enterprise, provided that that law shall be applied, so far as it is practicable to do so, consistent with the principles of this Article.

3. 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 derived from a company which is a resident of a Contracting State by a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed 17 percent of the gross amount of the dividends. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

3. The term “dividends” in this Article means income from shares and other income assimilated to income from shares by the law relating to tax, of the Contracting State of which the company making the distribution is a resident for the purposes of its tax.

4. The provisions of paragraphs 1 and 2 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, 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 15**, 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 in so far as such dividends are paid to a resident of that other State or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such 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, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.

3. Notwithstanding the provisions of paragraph 2 the Government of a Contracting State shall be exempt from tax in the other Contracting State in respect of interest derived by the Government from the other State.

4. For the purposes of paragraph 3, the term "Government":

- (a) in the case of Fiji means the Government of the Republic of Fiji and shall include:
 - (i) Fiji National Provident Fund;
 - (ii) Fiji Development Bank;
 - (iii) The Reserve Bank of Fiji (Central Bank).
- (b) in the case of Papua New Guinea means the Government of the Independent State of Papua New Guinea and shall include:
 - (i) the Provincial Authorities;
 - (ii) the Local Level Government Authorities;
 - (iii) the Statutory Authorities.
- (c) in the case of both Fiji and Papua New Guinea, any other institution the capital of which wholly owned by either the Government of Fiji or the Government of Papua New Guinea as may be agreed from time to time between the competent authorities of both the Contracting States

5. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

6. The provisions of paragraphs 1 and 2 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 service from a fixed base situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with:

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to in sub-paragraph 1(b) of 1(c) of **Article 7**.

In such case, the provisions of **Article 7** or **Article 15**, as the case may be, shall apply.

7. Interest shall be deemed to arise in a Contracting State when the payer is that Contracting State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the interest, whether the person 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 that permanent establishment or fixed base, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds 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 to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

9. The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article.

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 State, but if the recipient is the beneficial owner of the royalties, the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. The term “royalties” as used in this Article means payments or credits of any kind received as consideration for:

- (a) the use of or the right to use, any copyright, patent, design or model, plan, secret formula or process, trademark, or other like property or right;
- (b) the use of, or the right to use, any industrial, commercial or scientific equipment;
- (c) the supply of scientific, technical, industrial or commercial knowledge or information;
- (d) the supply of any assistance that is ancillary and subsidiary to, and is furnished as a means of enabling the application or enjoyment of, any such property or right as is mentioned in sub-paragraph (a), any such equipment as is mentioned in sub-paragraph (b) or any such knowledge or information as is mentioned in sub-paragraph (c);

- (e) the use of, or the right to use:
 - (i) cinematograph or motion picture films; or
 - (ii) films or video tapes in connection with television; or
 - (iii) tapes or compact disks in connection with radio and television broadcasting; or
 - (iv) computer Software or programmes developed in connection with the use of computers; or
- (f) total or partial forbearance in respect of the use or supply of any property or right referred to in this paragraph.

4. The provisions of paragraphs 1 and 2 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:

- (a) such permanent establishment or fixed base; or
- (b) business activities referred to in sub-paragraph 1(b) or 1(c) of **Article 7**.

In such case, the provisions of **Article 7** or **Article 15**, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory body thereof, or a resident of that State. Where, however, the person paying such royalties, whether the person is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or fixed base in connection with which the obligation to pay the royalties was incurred, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds 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. In such a 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. In this Article, a reference to royalties paid or to the payment of royalties includes royalties credited or the crediting of royalties.

ARTICLE 13

TECHNICAL FEES

1. Technical fees 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 technical fees may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the technical fees the tax shall not exceed 15 per cent of the gross amount of the technical fees.

3. The term “technical fees” as used in this Article means payments of any kind to any person, other than to an employee of the person making the payments, in consideration for any services of a technical, managerial or consultancy nature.

4. The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the technical fees, being a resident of a Contracting State, carries on business in the other Contracting State in which the technical fees arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the technical fees are effectively connected with such permanent establishment or fixed base. In such case, the provisions of **Article 7** or **Article 15**, as the case may be, shall apply.

5. If a resident of one of the Contracting States, who receives and beneficially owns technical fees which arise in the other Contracting State, so elects for any year of assessment, financial year or year of income, the tax in respect of those technical fees in the Contracting State in which they arise shall be calculated in the last-mentioned Contracting State and as if those technical fees were taxable in accordance with **Article 7** or **Article 15**, as the case may be, as profits attributable to that permanent establishment or fixed base.

6. Technical fees shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a statutory authority thereof, or a resident of that State. Where, however, the person paying the technical fees, whether the person 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 obligation to pay the technical fees was incurred, and such technical fees are borne by that permanent establishment or fixed base, then such technical fees shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

7. 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 technical fees 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 a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Agreement.

ARTICLE 14

GAINS FROM THE ALIENATION OF PROPERTY

1. Gains from the alienation of real property, as defined in paragraph 2 of **Article 6**, may be taxed in the Contracting State in which such property is situated.

2. Gains from the alienation of property other than real 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 property other than real property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such fixed base, may be taxed in that other State. However, gains from the alienation of ships or aircraft operated by an enterprise of a Contracting State in international traffic and property other than real property pertaining to the operation of such ships or aircraft shall be taxable only in the State of which the enterprise is a resident.

3. Gains from the alienation of any property or assets, other than those mentioned in paragraphs 1 and 2 of this Article, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 15

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:

- (a) a permanent establishment or fixed base is regularly available to the individual in the other Contracting State for the purpose of performing the individual's activities, in which case, so much of the income as is attributable to activities exercised from that permanent establishment or fixed base may be taxed in the other State;
- (b) income is derived by the individual from a resident of that other Contracting State and exceeds an amount of 5000 Fiji dollars or its equivalent in Papua New Guinea currency in any 365 day period, in which case so much of the income as is derived from the activities in that other Contracting State may be taxed in that State; or
- (c) an individual's stay in that other Contracting State exceeds 120 days in any 365 day period, in which case so much of the income as is derived from activities in that other Contracting State may be taxed in that State.

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 16

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of **Articles 17, 19, 20 and 21**, salaries, wages, gratuities, allowances 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 there from may be taxed in that other State.

2. Notwithstanding the provisions of paragraph 1, 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 aggregate 120 days in any 365 day period; 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; and
- (d) the remuneration is, or upon the application of this Article will be, subject to tax in the first-mentioned 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 by an enterprise of a Contracting State may be taxed in that state.

ARTICLE 17

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in their capacity as member of the board of directors of a company which is resident of the other Contracting State may be taxed in that other State.

ARTICLE 18

ARTISTES AND SPORTSMEN

1. Notwithstanding the provisions of **Articles 15** and **16**, 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 personal activities as such exercised in the other Contracting State, may be taxed in the other State.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in that capacity accrues not to the entertainer or sportsman but to another person, that income may, notwithstanding the provisions of **Articles 7, 15** and **16**, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to remuneration or profits derived from activities exercised in a Contracting State if the visit to that State is directly or indirectly supported wholly or substantially from the public funds of the other Contracting State, a political subdivision, a local authority or a statutory body itself.

ARTICLE 19

PENSIONS AND ANNUITIES

1. Subject to the provisions of paragraph 2 of **Article 20**, any pensions and other similar remuneration for past employment or any annuity arising in a Contracting State and paid to a resident of the other Contracting State shall be taxable only in that other State.

2. The term "annuity" includes 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 20

GOVERNMENT SERVICES

1. (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority or a statutory body thereof to any individual in respect of services rendered to that State or political subdivision or a local authority or statutory body thereof shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that other State and the individual is a resident of that other State who:
 - (i) is a national of that other State; or
 - (ii) did not become a resident of that other State solely for the purpose of performing the services.

2. The provisions of **Articles 16, 17 and 19** shall apply to remuneration or pensions in respect of services rendered in connection with any trade or business carried on by a Contracting State, a political subdivision or a local authority or a statutory body thereof.

ARTICLE 21

STUDENTS AND TRAINEES

An individual who is a resident of a Contracting State immediately before making a visit to the other Contracting State and is temporarily present in the other State solely:

- (a) as a student at a recognised university, college, school or other similar recognised educational institution in that other State.,
- (b) as a business or technical apprentice;
- (c) as a recipient of a grant, allowance or award for the primary purpose of study, research or training from the Government or either State or from a scientific, educational, religious or charitable organisation or under a technical assistance program entered into by the Government of either State;

shall be exempt from tax in that other State on:

- (i) all remittances for the purposes of maintenance, education, study, research or training arising from sources outside the State in which the person is a student or trainee;
- (ii) the amount of such grant, allowance or award; and
- (iii) any remuneration not exceeding 5000 Fiji dollars or its equivalent in Papua New Guinea currency per annum in respect of services in that other State, provided the services are performed in connection with the person's study, research or training or are necessary for the purposes of the person's maintenance.

ARTICLE 22

TEACHERS AND RESEARCHERS

1. An individual who is a national of a Contracting State who, at the invitation of any university, college or other similar public institution, visits the other State for a period not exceeding two years solely for the purpose of teaching or research or both at such public institution, shall be exempt from tax in that other State on any remuneration for such teaching or research which is subject to tax in the first-mentioned Contracting State.

2. This article shall not apply to income from teaching or research if such teaching or research is undertaken not in the public interest but primarily for the private benefit of a specific person or persons.

ARTICLE 23

INCOME NOT EXPRESSLY MENTIONED

1. Items of income of a resident of one of the Contracting States which are not expressly mentioned in the foregoing articles of this agreement shall be taxable only in that State.

2. However, any such income derived by a resident of one of the Contracting States from sources in the other Contracting State may also be taxed in that other State.

3. The provisions of paragraph 1 shall not apply to income derived by a resident of one of the Contracting States where that income is effectively connected with a permanent establishment or fixed base situated in the other Contracting State. In such case, the provisions of **Article 7** or **Article 15** as the case may be, shall apply.

ARTICLE 24

ELIMINATION OF DOUBLE TAXATION

1. Subject to the laws of Fiji regarding the allowances as a credit against Fiji tax of tax payable in any country other than Fiji, Papua New Guinea tax payable under the laws of Papua New Guinea and in accordance with this Agreement by a resident of Fiji in respect of income derived from Papua New Guinea shall be allowed as credit against Fiji tax payable in respect of that income. Where such income is a dividend paid by a company which is a resident of Papua New Guinea to a company which is a resident of Fiji and which owns not less than 10 per cent of the voting shares of the company paying the dividend, the credit shall take into account Papua New Guinea tax payable by that company in respect of its income out of which the dividend is paid. The credit shall not, however, exceed that part of the Fiji tax, as computed before the credit is given, which is appropriate to such item of income.

2. For the purposes of paragraph 1, the term “Papua New Guinea tax payable” shall be deemed to include any amount which would have been payable as Papua New Guinea tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under any provisions of Papua New Guinea law, or any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

3. Subject to the provisions of the law of Papua New Guinea from time to time in force which relate to the allowance of a credit against Papua New Guinea tax of tax paid in a country outside Papua New Guinea, Fiji tax payable under the laws of Fiji and in accordance with this Agreement, whether directly or by deduction, in respect of income derived by a person who is a resident of Papua New Guinea for the purpose of the law of Papua New Guinea relating to Papua New Guinea tax from sources in Fiji (not including, in the case of a dividend, tax paid in respect of the profits out of which the dividend is paid) shall be allowed as a credit against Papua New Guinea tax payable in respect of that income.

4. For the purposes of paragraph 3, the term “Fiji tax payable” shall include an amount equivalent to the amount of any tax foregone which, under the laws of Fiji and in accordance with this Agreement, would have been payable as tax on income but for an exemption from, or a reduction of tax on that income resulting from the operation of the special incentives under the laws of Fiji for the promotion of economic development of Fiji which were in force on the date of signature of this Agreement or any other provisions which may subsequently be introduced in Fiji in modification of, or in addition to, those laws so far as they are agreed by the competent authorities of the Contracting States to be of a substantially similar character.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

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

person may, notwithstanding of the remedies provided by the taxation laws of those States, present his case to the competent authority of the State of which the person 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 the Agreement.

2. The competent authority shall endeavour, if the claim 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 this Agreement.

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

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of applying the provisions of this Agreement.

ARTICLE 26

EXCHANGE OF INFORMATION

1. The competent authorities of the Contracting states shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement or for the prevention or detection of fraud, evasion or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall be disclosed only to persons or authorities (including a court or reviewing authority) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Agreement.

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

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

ARTICLE 27

DIPLOMATIC AND CONSULAR OFFICERS

Nothing in this Agreement shall affect the fiscal privileges of diplomatic or consular officers under the general rules of international law or under the provisions of special agreements.

ARTICLE 28

ENTRY INTO FORCE

Each of the Contracting States shall notify to the other 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 Fiji:
 - (i) in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after the first day of January in the calendar year immediately following that in which this Agreement enters into force.
- (b) in Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year following that in which the later of these notifications is given;
 - (ii) in respect of any other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the later of these notifications is given.

ARTICLE 29

TERMINATION

This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement by giving notice of termination, through the diplomatic channel, at least six months before the end of any calendar year beginning after the expiration 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 Fiji:
 - (i) in relation to Fiji tax, in respect of income, profits or gains derived during any income year beginning on or after the first day of January in the calendar year following that in which the notice is given.
- (b) in Papua New Guinea:
 - (i) in respect of withholding tax on income that is derived by a non-resident, in relation to income derived on or after 1 January in the calendar year next following that in which the notice is given;
 - (ii) in respect of other Papua New Guinea tax, in relation to income of any year of income beginning on or after 1 January in the calendar year next following that in which the notice is given.

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

Done in duplicate at Port Moresby this twenty-nine day of April one thousand nine hundred and ninety-eight.

B. VUNIBOBO
for the Government of the Republic of Fiji

R.YAKI
for the Government of the Independent
State of Papua New Guinea

U **UNITED KINGDOM**

LN 12/1976 [FRGS No. 3 16th January 1976]

DOUBLE TAXATION RELIEF ARRANGEMENTS WITH
THE UNITED KINGDOM

TABLE OF PROVISIONS

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The Government of Fiji has made arrangements with the Government of the United Kingdom with a view to the prevention of the levying under the laws of Fiji and of the United Kingdom of income tax in respect of the same income and the rendering of reciprocal assistance in the administration of, and the collection of, taxes under the income tax laws of Fiji and of the United Kingdom.

The arrangements so made are embodied in a Convention concluded on the 21 November 1975, a copy of which is set out in the Schedule.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF FIJI FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

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

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

Have agreed as follows:—

ARTICLE 1

PERSONAL SCOPE

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

ARTICLE 2

TAXES COVERED

1. The taxes which are the subject of this Convention are:
 - (a) in the United Kingdom of Great Britain and Northern Ireland:
 - (i) the income tax;
 - (ii) the corporation tax; and
 - (iii) the capital gains tax;
(hereinafter referred to as “United Kingdom tax”).
 - (b) in Fiji;
 - (i) the income tax (including basic tax and normal tax);
 - (ii) the non-resident dividend withholding tax, the interest withholding tax and the dividend tax; and
 - (iii) the land sales tax.
(hereinafter referred to as “Fiji tax”).

2. This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

ARTICLE 3

GENERAL DEFINITIONS

1. In this Convention, 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 under the laws of the United

Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

- (b) the term “Fiji” means the islands of Fiji, including the island of Rotuma and its dependencies, and includes all areas of water which in accordance with international law have been or may hereafter be designated under the laws of Fiji as areas over which the sovereignty of Fiji may be exercised with respect to the sea, the sea bed and its sub-soil and the natural resources thereof;
- (c) the term “nationals” means:
 - (i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;
 - (ii) in relation to Fiji:
 - (a) all citizens of Fiji; and
 - (b) all legal persons, partnerships and associations deriving their status as such from the law of Fiji;
- (d) the term “United Kingdom tax” means tax imposed by the United Kingdom being tax to which this Convention applies by virtue of the provisions of **Article 2**; the term “Fiji tax” means tax imposed by Fiji being tax to which this Convention applies by virtue of the provisions of **Article 2**;
- (e) the term “tax” means United Kingdom tax, or Fiji tax, as the context requires;
- (f) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Fiji, as the context requires;
- (g) the term “person” comprises an individual, a company and any other body of persons;
- (h) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (i) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (j) the term “competent authority” means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Fiji the Commissioner of Inland Revenue or his authorised representative;
- (k) the term “international traffic” includes traffic between places in one country in the course of a voyage which extends over more than one country.

2. As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

FISCAL DOMICILE

1. For the purposes of this Convention, the term “resident of a Contracting State” means, subject to paragraphs (2) and (3) of this Article, any person who, under the law of that Contracting State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that

Contracting State only if he derives income from sources therein. The terms “resident of the United Kingdom” and “resident of Fiji” shall be construed accordingly.

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 in accordance with the following rules:

- (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 not a 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 Convention, the term “permanent establishment” means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2. The term “permanent establishment” shall include especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, oil well, quarry or other place of extraction of natural resources.,
- (g) a building site or construction or assembly project which exists for more than six months;
- (h) an agricultural, pastoral or forestry property.

3. The term “permanent establishment” shall not be deemed 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 for collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

4. An enterprise of one of the Contracting States shall be deemed to have a permanent establishment in the other Contracting State if:

- (a) it carries on the activity of providing the services within that other Contracting State of public entertainers or athletes referred to in **Article 17**; or
- (b) it carries on supervisory activities in that other Contracting State for more than six months in connection with a building site, or a construction, installation or assembly project which is being undertaken in that other Contracting State.

5. A person acting in a Contracting State on behalf of an enterprise of the other Contracting State other than an agent of an independent status to whom the provisions of paragraph (6) of this Article apply shall be deemed to be a permanent establishment in the first-mentioned Contracting State if he has, and habitually exercises in that Contracting State an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

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

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

ARTICLE 6

LIMITATION OF RELIEF

Where under any provision of this Convention income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State, an individual, in respect of the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State, and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is remitted to or received in that other Contracting State.

ARTICLE 7

INCOME FROM IMMOVABLE PROPERTY

1. Income from immovable property may be taxed in the Contracting State in which such property is situated.

2. (a) The term “immovable property” shall, subject to sub-paragraph (b) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.
 - (b) The term “immovable property” 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, boats 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 professional services.

ARTICLE 8

BUSINESS PROFITS

1. The profits of an enterprise of a Contracting State shall be taxable only in that Contracting State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Contracting State but only so much of them as is attributable to that permanent establishment.
2. 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 at arm's length with the enterprise of which it is a permanent establishment.
3. In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise (other than expenses, which would not be deductible if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere.
4. In so far as it has been customary in a Contracting State according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total income of the enterprise to its various parts nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of this Article.
5. No profits shall be attributed to a permanent establishment by reason on the mere purchase by that permanent establishment of goods of merchandise for the enterprise.
6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is a good and sufficient reason to the contrary.

7. Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

8. Where profits are attributable to a permanent establishment situated in a Contracting State of an enterprise of the other Contracting State and those profits are remitted in whole or in part out of the first-mentioned State, then the profits so remitted shall not be subject to any greater charge to tax in the first-mentioned State than if they had not been so remitted.

9. Nothing in this Article shall affect any provisions of the law of either Contracting State regarding the taxation of:

- (a) any person who carries on a business of any form of insurance. Provided that if the law in force in either Contracting State at the date of signature of this Convention relating to the taxation of any such person is varied (otherwise than in minor respects so as not to affect its general character), the Contracting Governments shall consult each other with a view to agreeing to such amendment of this sub-paragraph as may be necessary;
- (b) any income from the alienation of immovable property as defined in paragraph (2) of **Article 7** which is situated in that Contracting State or from the alienation of shares in a company incorporated in that Contracting State whose assets consist wholly or mainly of such immovable property situated therein.

ARTICLE 9

SHIPPING AND AIR TRANSPORT

A resident of a Contracting State shall be exempt from tax in the other Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined wholly or mainly to places in the other Contracting State.

ARTICLE 10

ASSOCIATED ENTERPRISES

Where—

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State; and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 11

DIVIDENDS

1. Dividends derived from a company which is a resident of Fiji by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Fiji but where such dividends are beneficially owned by a resident of the United Kingdom the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

2. Dividends derived from a company which is a resident of the United Kingdom by a resident of Fiji may be taxed in Fiji. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of Fiji the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

3. However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

- (a) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Fiji may be taxed in Fiji.
 - (ii) Where a resident of Fiji is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) 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.
 - (iii) Except as provided in sub-paragraph (a)(ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Fiji shall be exempt from any tax in the United Kingdom which is chargeable on dividends.
- (b) A resident of Fiji who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the 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.
- (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial, owner of the dividends 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 dividends. For the purpose of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them

4. 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 corporate rights assimilated to income from shares by the taxation law 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 the provisions of **Article 12** of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

5. The provisions of paragraph (1), or as the case may be paragraphs (2) and (3), of this Article shall not apply if the beneficial owner of the dividends being a resident of a Contracting State, has in the other Contracting State, of which the company paying the dividends is a resident, 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 Article 8 shall apply.

6. If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividend is paid then the provisions of paragraph (1), or as the case may be paragraphs (2) and (3), of this Article 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 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 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 purposes of securing the benefit of this Article.

7. Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company’s undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

ARTICLE 12

INTEREST

1. Interest arising in a Contracting State which is derived and beneficially owned by 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 law of that State, but 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 paragraph means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

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, has in the other Contracting State in which the interest arises a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of **Article 8** shall apply.

5. Interest shall be deemed to arise in a Contracting State when the payer is the Government of that State, 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 in connection with which the indebtedness on which the interest is paid was incurred and such interest is borne by that permanent establishment, then such interest shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

6. Any provision of the law of one of the Contracting State which relates only to interest paid to a non-resident company with or without any further requirement, or which relates only to interest payments between interconnected companies with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a dividend or distribution. The preceding sentence shall not however apply to interest derived and beneficially owned by a company which is a resident of one of the Contracting States in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

7. The relief from tax provided for in paragraph (2) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

- (a) does not bear tax in respect thereof in the Contracting State of which it is a resident; and
- (b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within 3 months of the date on which such beneficial owner acquired such debt-claim.

8. Where, owing to 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, having regard to the debt-claim for which it is paid, exceeds 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. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

ROYALTIES AND MANAGEMENT FEES

1. Royalties and management fees arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State may be taxed in that other State.

2. Royalties derived and beneficially owned by a resident of a Contracting State may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the royalties.

3. Management fees derived and beneficially owned by a resident of a Contracting State may also be taxed in the Contracting State in which they arise and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the net amount of the management fees after deduction of any amount allowed as expenses against those management fees in computing the tax payable thereon in the first-mentioned Contracting State.

4. (a) 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 and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience but does not include royalties or other amounts paid in respect of the extraction or removal of natural resources.

(b) The term “management fees” as used in this Article means payments of any kind to any persons, other than to an employee of the person making the payments, for, or in respect of, the provision of industrial, scientific or commercial advice, or management of technical services, or similar services or facilities, but it does not include payments for independent personal services mentioned in **Article 15**.

5. Notwithstanding paragraph (2) of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, artistic or scientific work (excluding royalties and like payments in respect of cinematograph films and films or tapes for radio or television broadcasting) arising in a Contracting State and which are derived and beneficially owned by a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State.

6. The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the royalties or management fees, being a resident of a Contracting State, has in the other Contracting State in which the royalties or management fees arise, a permanent establishment and the right or property giving rise to the royalties is, or the management fees are effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of **Article 8** shall apply.

7. Royalties and management fees shall be deemed to arise in a Contracting State where the payer is that State itself, a local authority or a resident of that State. Where, however, the person paying the royalties or management fees, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the obligation to pay the royalties or management fees was incurred and the royalties or management fees are borne by that permanent establishment, then the royalties or management fees shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

8. Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties or management fees paid, having regard to the advice, services, use, right or information for which they are paid, exceeds 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. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 14

CAPITAL GAINS

1. Capital gains from the alienation of immovable property, as defined in paragraph (2) of **Article 7**, may be taxed in the Contracting State in which such property is situated.

2. Capital gains from the alienation of shares in a company incorporated in a Contracting State whose assets consist wholly or mainly of immovable property as defined in paragraph (2) of **Article 7** which is situated in that Contracting State may be taxed in that State.

3. Capital 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 professional services, including such gains from the alienation of such permanent establishment (alone, or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

4. Notwithstanding the provisions of paragraph (3) of this Article capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

5. Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

6. The provisions of paragraph (5) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on capital gains from the alienation of any property derived by

a person 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 15

INDEPENDENT PERSONAL SERVICES

1. Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that Contracting 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 Contracting 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 16

EMPLOYMENTS

1. Subject to the provisions of **Articles 18, 19 and 21**, 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 Contracting 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 Contracting 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 Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned; and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting State; and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other Contracting State.

3. Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

4. In relation to remuneration of a director of a company derived from a company the preceding provisions of this Article shall apply as if the remuneration were remuneration of an employee in respect of an employment and as if references to “employer” were references to the company.

ARTICLE 17

ARTISTES AND ATHLETES

Notwithstanding the provisions of **Articles 15 and 16**, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their

personal activities as such may be taxed in the Contracting State in which those activities are exercised.

ARTICLE 18

PENSIONS

1. Subject to the provisions of paragraphs (1) and (2) of Article **19**, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a 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

GOVERNMENTAL FUNCTIONS

1. Remuneration, including pensions, paid by the Government of a Contracting State to any individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other Contracting State if the individual is not ordinarily resident in that other State or (where the remuneration is not a pension) is ordinarily resident in that other State solely for the purpose of rendering those services.

2. The provisions of paragraph (1) of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by the Governments of either of the Contracting States for the purposes of profit.

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 Contracting 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 the first-mentioned State, provided that such payments are made to him from sources outside that State.

ARTICLE 21

TEACHERS

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching in respect of which he is subject to tax in the other Contracting State.

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) Fiji tax payable under the laws of Fiji and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Fiji (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits income or chargeable gains by reference to which the Fiji tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Fiji 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 Fiji tax for which credit may be allowed under the provisions of sub-paragraph (a) of this paragraph) the Fiji tax payable by the company in respect of the profits out of which such dividend is paid.

2. For the purposes of paragraph (1) of this Article, the term “Fiji tax payable” shall be deemed to include any amount which would have been payable as Fiji tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

- (a) any of the following provisions, that is to say—
 - Section 16(2)(a) and Section 16(2)(b) of the Income Tax Act; Section 8(1) of the Hotels Aid Act¹;
 - Section 9(3)(h) of the Income Tax Act provided that relief is given for the same taxable year under either Section 16(2)(a) or Section 16(2)(b) of the Income Tax Act or Section 8(1) of the Hotels Aid Act;so far as they were in force on, and have not been modified since, the date of the signature of this Convention, or have been modified only in minor respects so as not to affect their general character; or
- (b) any other provision which may subsequently be made granting an exemption or reduction 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.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Fiji tax was first granted in respect of that source.

3. Subject to the provisions of the law of Fiji regarding the allowance as a credit against Fiji tax of tax payable in a territory outside Fiji (which shall not affect the general principle thereof)—

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

¹ Cap. 215

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

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

5. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (3) of this Article.

ARTICLE 23

PERSONAL ALLOWANCES

1. Individuals who are residents of Fiji shall be entitled to the same personal allowances, reliefs and reductions or the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Fiji tax as Fiji nationals not resident in Fiji.

ARTICLE 24

NON-DISCRIMINATION

1. The 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 the Government of a 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 other Contracting State an additional tax not exceeding 15 per cent of two-thirds of the profits of the permanent establishment after payment of the company or corporation tax on those profits.

3. 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 that first-mentioned State are or may be subjected.

4. 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, nor as conferring any exemption from tax in a Contracting State in respect of dividends paid to a company which is a resident of the other Contracting State.

5. In this Article the term "Taxation" means taxes which are the subject of this Convention.

ARTICLE 25

MUTUAL AGREEMENT PROCEDURE

1. Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws 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 an appropriate 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 not in accordance with the Convention.

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

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 26

EXCHANGE OF INFORMATION

The competent authorities of the Contracting State shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention 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 Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment, collection, enforcement or prosecution in respect of taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 27

ENTRY INTO FORCE

1. This Convention shall come into force on the date when the last of all such things shall have been done in the United Kingdom and Fiji as are necessary to give the Convention the force of law in the United Kingdom and Fiji respectively, and shall thereupon have affect:

(a) in the United Kingdom:

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- (i) as respects income tax and capital gains tax, for any year of assessment, beginning on or after 6th April, 1975;
 - (ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1975;
- (b) in Fiji:
- as respects income tax (including basic tax and normal tax), non-resident dividend withholding tax, interest withholding tax, dividend tax and land sales tax for any year of assessment beginning on or after 1st January, 1975.

2. Subject to the provisions of paragraph (3) of this Article, the Arrangement between the Government of the United Kingdom and the Government of Fiji made in 1950, as amended by the Arrangement made in 1968 (hereinafter referred to as “the 1950 Arrangement”), shall cease to have effect as respects taxes to which this Convention in accordance with the provisions of paragraph (1) of this Article applies.

3. Where any provision of the 1950 Arrangement would have afforded any greater relief from tax any such provision shall continue to have effect for any year of assessment or financial year beginning before the entry into force of this Convention.

ARTICLE 28

TERMINATION

1. This Convention shall remain in force until terminated by one of the Governments. Either Government may denounce the Convention by giving notice of termination at least six months before the end of any calendar year after the year 1980. In such event, the Convention shall cease to have effect:

- (a) in the United Kingdom:
 - (i) as respects 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) as respects 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 Fiji:

as respects income tax (including basic tax and normal tax), non-resident dividend withholding tax, interest withholding tax, dividend tax and land sales tax for any year of assessment beginning on or after 1st January in the calendar year next following that in which the notice is given.

2. The termination of this Convention shall not have the effect of reviving any Arrangement terminated by this Convention.

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

Done in duplicate at Suva this 21st day of November, 1975.

BRIAN MILLER,
For the Government of the United Kingdom,
of Great Britain and Northern Ireland.

C. A. STINSON,
For the Government of Fiji.