EXPLANATORY MEMORANDUM TO THE DOUBLE TAXATION RELIEF AND INTERNATIONAL TAX ENFORCEMENT (TAXES ON INCOME AND CAPITAL) (SAUDI ARABIA) ORDER 2008

2008 No. [DRAFT]

1. This explanatory memorandum has been prepared by HM Revenue & Customs and is laid before the House of Commons by Command of Her Majesty.

This memorandum contains information for the Select Committee on Statutory Instruments.

2. Description

The draft Order brings into effect those arrangements specified in the Double Taxation Convention set out in the Schedule to the draft Order.

3. Matters of special interest to the Select Committee on Statutory Instruments

3.1 Type of resolution

The draft Order is subject to the affirmative resolution procedure.

3.2 Details of the Convention

Further details of the Convention scheduled to the draft Order are annexed to this memorandum.

4. Legislative Background

4.1 General

The Order is made under section 788(1) of the Income and Corporation Taxes Act 1988 (c. 1) and section 173(1) of the Finance Act 2006 (c. 25). Section 788 was amended by section 88(1) of the Finance Act 2002 (c. 23) and extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).

Section 788 provides the mechanism by which arrangements made with overseas territories for the purpose of affording relief from double taxation in relation to income tax, corporation tax and capital gains tax and taxes of a similar character in the other territory are given effect in the United Kingdom.

Section 173 of FA 2006 provides the mechanism by which such arrangements may also include provisions about, among other things, the exchange of information foreseeably relevant to the administration, enforcement or recovery of any tax or duty.

The relevant Convention is scheduled to the Order. It is thus given domestic legislative effect.

In accordance with section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, a draft of this Order is required to be laid before and approved by a resolution of the House of Commons prior to submission to Her Majesty in Council. Section 788(10) was substituted by section 176 of the Finance Act 2006 (c. 25).

4.2 EU Legislation

This instrument does not implement EU legislation.

5. Extent

This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Financial Secretary (Jane Kennedy) has made the following statement regarding Human Rights:

In my view the provisions of the draft Double Taxation Relief and International Tax Enforcement (Taxes on Income and Capital) (Saudi Arabia) Order 2008 are compatible with the Convention rights.

7. Policy background

Double Taxation Conventions aim to eliminate the double taxation of income or gains arising in one country and paid to residents of another country. They do this by dividing the taxing rights that each treaty partner has under its domestic law over the same income and gains. They provide additional protection for taxpayers by specific measures combating discrimination in tax treatment. More generally, Conventions benefit the taxpayer by ensuring certainty of treatment and, as far as possible, by reducing compliance burdens. Conventions also serve an Exchequer protection role by including provisions to combat avoidance and evasion — not least by measures providing for the exchange of information between revenue authorities. They also encourage and maintain international consensus on the appropriate tax treatment of cross-border economic activity and thus promote international trade and investment.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no regulatory impact on business, charities or voluntary bodies. Taxpayers may have to make a claim to HM Revenue & Customs or the other country’s fiscal authority in order to benefit from the Convention. However,

taxpayers will benefit from reduced compliance burdens and, in many cases, from having to deal with just one fiscal authority.

8.2 Under a Double Taxation Convention, one or both of the countries gives up all or part of their taxing rights so that a given source of income is taxed only once. Measured against a baseline of single taxation only, Conventions do not therefore generally have an exchequer cost; rather, by encouraging cross-border economic activity, they can lead to an increase in tax revenue. But where double taxation is unrelieved, the economic activity in question, and hence the higher tax revenue attributable to it, will often be only temporary.

9. Contact

Geoff Barnard at HM Revenue & Customs (Tel: 020 7147 2734 / Email: Geoff.Barnard@hmrc.gsi.gov.uk) can answer any queries regarding the instrument.

ANNEXE

GENERAL

All the United Kingdom's recent Double Taxation Conventions largely follow the approach adopted in the OECD's *Model Tax Convention on Income and on Capital*. This Convention continues that approach.

NOTES ON DETAILS

ARTICLE 1 – PERSONS COVERED

This Article sets out the general scope of the Convention.

It provides that the Convention is to apply to persons who are residents of one or both of the Contracting States (the United Kingdom and the Kingdom of Saudi Arabia).

ARTICLE 2 – TAXES COVERED

This Article lists the taxes to which the Convention is to apply.

The existing United Kingdom taxes to which the Convention applies are the income tax, the corporation tax and the capital gains tax.

The existing Saudi taxes to which the Convention applies are the Zakat and the income tax including the natural gas investment tax. The Zakat is only chargeable on Saudi nationals resident in Saudi Arabia and does not qualify for credit against United Kingdom tax. (See sub-paragraph 2(b) of Article 24 and sub-paragraph 8(b) of the Protocol).

The Convention will also apply to any identical or substantially similar taxes subsequently imposed by either country in addition to or in place of the taxes mentioned above, and it obliges each country to notify the other of significant changes in their taxation laws.

ARTICLE 3 – GENERAL DEFINITIONS

This Article defines a number of terms used in the Convention and provides a rule for determining the meaning of terms not defined in the Convention.

ARTICLE 4 - RESIDENT

This Article establishes the meaning of "resident of a Contracting State" and lays down detailed rules for resolving cases where individuals or other persons may be considered residents of both countries for tax purposes under their domestic laws.

ARTICLE 5 – PERMANENT ESTABLISHMENT

This Article defines the term “permanent establishment” for the purposes of the Convention.

It gives examples of permanent establishments. The phrase “any place of extraction of natural resources” covers oil and gas wells.

It also provides that a building site, construction, assembly or installation project, or supervisory activities connected therewith, is considered a permanent establishment if it lasts for more than six months. In addition, the furnishing of services, including consultancy services, is considered a permanent establishment, but only where the activities continue (for the same or a connected project) for a period or periods aggregating more than 183 days within any 12-month period.

The article identifies a number of activities which do not constitute a permanent establishment even though they are carried on through a fixed place of business. As well as the usual activities set out in the OECD Model, activities involving the sale of goods or merchandise of an enterprise displayed at an occasional temporary fair or exhibition after the fair or exhibition has closed are considered not to constitute a permanent establishment.

Taken with Article 7, it prescribes in general terms the circumstances and manner in which businesses of one country may be taxed on their profits arising in the other.

ARTICLE 6 – INCOME FROM IMMOVABLE PROPERTY

This Article allows the country in which the property is situated to tax income from immovable property. It also defines immovable property.

ARTICLE 7 – BUSINESS PROFITS

This Article provides that unless an enterprise of one country carries on business in the other through a permanent establishment situated there, its profits will be taxable only in its country of residence. Where the enterprise has a permanent establishment in the other country, that country will be entitled to tax profits attributable to the permanent establishment. Deductible expenses for payments from a permanent establishment to its Head Office or any of its other offices are restricted and do not include payments such as income from debt-claims, royalties, fees or other similar payments in return for money lent or the use of patents or other rights, or as commission for specific services or management. Furthermore, similar expenses charged by the permanent establishment to its Head Office cannot be taken into account in computing the profits of the permanent establishment.

It also provides that profits relating to insurance risks in one country with an insurance company resident in the other country may be taxed according to the laws of the first country.

ARTICLE 8 – SHIPPING AND AIR TRANSPORT

This article governs the taxation of shipping and air transport operated in international traffic.

Paragraph 1 provides that profits of an enterprise of one country from the operation of ships or aircraft in international traffic shall be taxable only in that country.

Paragraph 2 provides that profits from the operation of ships or aircraft include profits from the rental of ships, aircraft or the use, maintenance or rental of containers. In each case the rental or use, maintenance or rental must be incidental to the operations in international traffic.

Paragraph 3 clarifies that paragraph 1 also applies to profits from participation in a pool, a joint business or an international operating agency.

ARTICLE 9 – ASSOCIATED ENTERPRISES

This Article governs the evaluation for tax purposes of transfers of goods, services, finance and intangible property between associated enterprises. It requires such transfers to be evaluated as if they had taken place between independent enterprises.

Where such an adjustment is made to the profits of an enterprise by one country, the other country will make an appropriate adjustment to the amount of tax charged on those profits, in order to relieve the double taxation which might otherwise arise as a result of an adjustment by just one country.

ARTICLE 10 – DIVIDENDS

This Article contains the rules for the taxation of dividends paid by a company that is a resident of one country to a resident of the other country.

Paragraph 1 provides that dividends paid by a company resident in one country to a resident of the other country may be taxed in that other country.

Paragraph 2 provides that the country of which the company paying the dividends is a resident may also tax the dividends, but it places a limit on the amount of tax which may be charged by that country. The tax charged by that country may not exceed 15 per cent of the gross amount of the dividends where qualifying dividends are paid by a property investment vehicle (see paragraph 5 of the Protocol for definitions of the terms "property investment vehicle" and "qualifying dividend"). In all other cases the tax is limited to 5 per cent of the gross amount of the dividends.

Paragraph 3 defines the term "dividends".

Paragraph 4 provides that paragraphs 1 and 2 shall not apply where a resident of a country receives dividends from the other country and the dividends are attributable to a

permanent establishment or fixed base through which that resident carries on business or performs independent personal services in the country of which the payer is a resident. In such circumstances, the taxation of the dividends is governed by Article 7 (Business Profits) or Article 14 (Independent Personal Services).

Paragraph 5 prevents the extra-territorial taxation by one country of dividends paid by a company that is a resident of the other country. The first country may not tax the dividends unless they are attributable to a permanent establishment or a fixed base in that country or are paid to a resident of that country. There is a similar provision concerning undistributed profits.

ARTICLE 11 – INCOME FROM DEBT-CLAIMS

This Article contains the rules for the taxation of income from debt-claims paid by a resident of one country to a resident of the other country.

Paragraph 1 provides that income from debt-claims arising in one country and beneficially owned by a resident of the other country shall be taxable only in that other country.

Paragraph 2 defines "income from debt-claims".

Paragraph 3 provides that paragraph 1 shall not apply where a resident of a country receives income from debt-claims from the other country and the income from debt-claims is attributable to a permanent establishment or fixed base through which that resident carries on business or performs independent personal services in the country of which the payer is a resident. In such circumstances, the taxation of the income from debt-claims is governed by Article 7 (Business Profits) or Article 14 (Independent Personal Services).

Paragraph 4 provides that where, because of a special relationship between the payer and the beneficial owner, the amount of income from debt-claims paid exceeds the amount which would have been paid in the absence of that special relationship. The Article will apply only to the income from debt-claims that would have been payable in the absence of the special relationship. The "excess" part of the payment shall remain taxable according to the laws of each country.

ARTICLE 12 – ROYALTIES

This Article contains the rules for the taxation of royalties arising in one country and derived by a resident of the other country.

Paragraph 1 provides that royalties arising in one country and paid to a resident of the other may be taxed in that other country.

Paragraph 2 provides that royalties may also be taxed in the country where they arise, but if the recipient of the royalties is the beneficial owner, it places a limit on the amount of tax which may be charged by that country. The tax charged by that country may not

exceed 5 per cent of the gross amount of the royalties which are paid for the use of, or the right to use, industrial, commercial, or scientific equipment; and 8 per cent in all other cases.

Paragraph 3 defines the term "royalties".

Paragraph 4 provides that paragraphs 1 and 2 shall not apply where a resident of a country receives royalties from the other country and the royalties are attributable to a permanent establishment or fixed base through which that resident carries on business or performs independent personal services in the country of which the payer is a resident. In such circumstances, the taxation of the income from debt-claims is governed by Article 7 (Business Profits) or Article 14 (Independent Personal Services).

Paragraph 5 provides rules for determining in which country royalties arise.

Paragraph 6 provides that where, because of a special relationship between the payer and the beneficial owner, the amount of royalties paid exceeds the amount which would have been paid in the absence of that special relationship, the Article will apply only to the amount that would have been agreed upon by the two parties in the absence of the special relationship. The "excess" part of the payment shall remain taxable according to the laws of each country.

ARTICLE 13 – CAPITAL GAINS

This Article contains the rules for the taxation of gains deriving from the alienation of property situated in one country by a resident of the other.

Paragraph 1 provides that gains derived by a resident of one country that are attributable to the alienation of immovable property situated in the other country may be taxed in the country in which the property is situated.

Paragraph 2 provides that gains derived by an enterprise of a country from the alienation of movable property forming part of the business property of a permanent establishment or pertaining to a fixed base maintained by that enterprise in the other country may be taxed in that other country. The paragraph also applies to gains derived from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base.

Paragraph 3 provides that gains derived by a resident of a country from the alienation of ships or aircraft operated in international traffic or of movable property pertaining to the operation or use of such ships or aircraft shall be taxable only in the country where the alienator is resident.

Paragraph 4 provides that gains derived by a resident of a country from the alienation of shares, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable property in the other country may be taxed in that other country. (See paragraph 7(a) of the Protocol).

Paragraph 5 provides that gains from the alienation of any property, other than that mentioned in paragraph 4, representing a participation of 25 per cent or more in a company may be taxed in the country where that company is resident.

Paragraph 6 provides that gains from the alienation of any property, other than that detailed in paragraphs 1 to 5, shall be taxable only in the Contracting State of which the alienator is a resident.

ARTICLE 14 – INDEPENDENT PERSONAL SERVICES

This Article contains the rules for the taxation of what are commonly called professional services. It is no longer in the OECD Model, such services falling within Article 7, but can be retained if the treaty partners so agree.

Paragraph 1 provides that income derived by a resident individual of one country in respect of professional services or other activities of an independent nature shall be taxable only in that country. However, if there is a fixed base in the other country or if the individual's stay in the other country exceeds 183 days in any 12 month period commencing or ending in the fiscal year concerned, the individual may be taxed there on the profits attributable to that fixed base or on the activities performed in that other country.

Paragraph (2) provides examples of what is meant by the term "professional services".

ARTICLE 15 – DEPENDENT PERSONAL SERVICES

This Article contains the rules for the taxation of employment income.

Paragraph 1 provides that, in general, employment income of a resident of one country can be taxed in the other country if the employment is exercised there.

Paragraph 2 provides an exception to the general rule where an employee is present in the other country for not more than 183 days in any twelve month period beginning or ending in the fiscal year concerned, the remuneration is paid by or on behalf of an employer who is not a resident of the other country and the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other country. Where all three conditions are satisfied, the remuneration will be taxable only in the employee's country of residence.

Paragraph 3 provides that remuneration derived by a resident of a country from an employment aboard a ship or aircraft operated in international traffic is taxable solely in the country in which the individual is resident.

ARTICLE 16 – DIRECTORS' FEES

This Article provides that directors' fees, etc. may be taxed in the country of which the company paying them is a resident.

ARTICLE 17 – ARTISTES AND SPORTSPERSONS

This Article contains the rules for the taxation of income derived from personal activities as an entertainer or sportsperson.

<u>Paragraph 1</u> provides that income of a resident of a country from his activities as an entertainer or sportsperson in the other country may be taxed in that other country.

<u>Paragraph 2</u> provides that income may be taxed in the country in which those activities are exercised irrespective of whether the income accrues to the entertainer or sportsperson himself or to some other person.

ARTICLE 18 – PENSIONS

This Article provides that pensions and other similar remuneration (except for government service pensions) paid to an individual who is a resident of one country shall be taxable only in that country.

ARTICLE 19 – GOVERNMENT SERVICE

This Article contains rules for the taxation of remuneration and pensions paid in respect of Government Service.

<u>Paragraph 1</u> provides that salaries, wages and other similar remuneration paid by a country, or of one of its political subdivisions or local authorities, will generally be taxable only in that country. However, such remuneration will be taxable only in the other country if the services are rendered in that other country by a national of that other country who is resident there <u>or</u> by a resident of that country who, although not one of its nationals, did not become a resident solely to render the services.

<u>Paragraph 2</u> provides that a pension paid out of funds created by a country, or of one of its political subdivisions or local authorities, shall be taxable only in that country. Such pensions will, however, be taxable solely in the other country if the recipient is a resident and a national of that other country.

<u>Paragraph 3</u> provides that paragraphs 1 and 2 shall not apply to remuneration or pensions for services rendered in connection with a business. Such income will be dealt with under Articles 15, 16, 17 or 18 as appropriate.

ARTICLE 20 – STUDENTS

This article contains the rules which govern the taxation of visiting students and business apprentices.

Paragraph 1 provides that payments for the maintenance, education or training of a student or business apprentice who is present in a country for full-time education or training and who, immediately before visiting that country, was a resident of the other country, will not be taxed in the first-mentioned country, provided the payments are made from sources outside that country.

Paragraph 2 provides that remuneration which a student or business apprentice who is or was before visiting a country a resident of the other country, and who is present in the first-mentioned country for his education or training, derives from services rendered in the first-mentioned country will not be taxed in that country unless the remuneration exceeds the exemption or allowance provided under the domestic law of that country.

ARTICLE 21 – TEACHERS AND RESEARCHERS

This Article provides that, subject to certain conditions, the remuneration of a visiting professor, teacher or researcher will not be taxed in the country visited for a period not exceeding two years. It also confirms the type of income from research that is covered by this Article.

ARTICLE 22 – OTHER INCOME

This Article contains the rules for the taxation of income not dealt with elsewhere in the Convention.

Paragraph 1 provides that income not covered elsewhere in the Convention will be taxed only by the country of which the recipient is a resident.

Paragraph 2 provides that paragraph 1 shall not apply, except in the case of income from immovable property, where the recipient of the income is a resident of a country and carries on business in the other country through a permanent establishment or performs independent personal services from a fixed base and the income is attributable to the permanent establishment or fixed base. In such circumstances, the taxation of the income is governed by Article 7 (Business Profits) or Article 14 (Independent Personal Services).

Paragraph 3 provides that, notwithstanding paragraphs 1 and 2 of this Article, items of income not covered elsewhere in the Convention may also be taxed in the source country.

ARTICLE 23 – CAPITAL

This Article contains the rules governing the taxation of capital.

<u>Paragraph 1</u> provides that capital represented by immovable property referred to in Article 6, owned by a resident of one country and situated in the other country may be taxed in that other country.

<u>Paragraph 2</u> provides that capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of one country has in the other country or the movable property of a fixed base available to a resident of one country in the other country for the purposes of performing independent personal services, may be taxed in that other country.

<u>Paragraph 3</u> provides that capital of an enterprise of one country represented by ships and aircraft in international traffic and by movable property used for the operation of such ships and aircraft will be taxable only in that country.

<u>Paragraph 4</u> provides that all other elements of capital owned by a resident of one country will only be taxable in that country.

ARTICLE 24 – ELIMINATION OF DOUBLE TAXATION

This Article sets out the methods by which the countries will relieve double taxation.

<u>Paragraph 1</u> sets out how the United Kingdom will relieve double taxation.

Sub-paragraph (a) provides that Saudi tax on profits, income or chargeable gains from sources within the Kingdom of Saudi Arabia is to be allowed as a credit against any United Kingdom tax computed by reference to the same income, profits or chargeable gains.

Sub-paragraph (b) provides that, in the case of a dividend paid by a company resident in the Kingdom of Saudi Arabia to a company resident in the United Kingdom which controls at least 10 per cent of the voting power in the paying company, the credit will take into account Saudi tax payable by the company in respect of the profits out of which the dividend is paid.

<u>Paragraph 2</u> sets out how the Kingdom of Saudi Arabia will relieve double taxation.

Sub-paragraph (a) provides that where a resident of the Kingdom of Saudi Arabia derives income which, under this Convention, may be taxed in the United Kingdom the Kingdom of Saudi Arabia shall allow, within certain limits, a deduction from the tax on that income an amount equal to the income tax paid in the United Kingdom.

Sub-paragraph (b) provides that the methods for relieving double taxation will not affect the regime for collecting the Zakat from Saudi nationals.

Paragraph 3 provides that, for the purposes of paragraphs 1 and 2, profits, income and capital gains owned by a resident of one country which may be taxed in the other country under the terms of the Convention, will be deemed to arise from sources in that other country.

ARTICLE 25 – MUTUAL AGREEMENT PROCEDURE

This Article authorises the competent authorities of the two countries to endeavour to resolve, by mutual agreement, cases of taxation not in accordance with the Convention and to settle points of doubt or difficulty in the application or interpretation of the Convention.

Paragraph 1 provides that, where a person considers that the actions of one or both countries will result in taxation not in accordance with the Convention, he may present his case to the competent authority of the country of which he is a resident or national. This right applies irrespective of any remedies provided by domestic law. The paragraph also sets out time limits for the presentation of a case: a case must be presented within two years of the first notification of the action resulting in taxation not in accordance with the Convention or, if later, within six years from the end of the taxable year or chargeable period in respect of which that taxation is imposed or proposed.

Paragraph 2 requires the competent authority to which the case is presented to endeavour, if it considers the objection justified and if it is unable to deal with the matter unilaterally, to resolve the case by mutual agreement with the competent authority of the other country. The paragraph also provides that any agreement reached between the competent authorities shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the countries, except such limitations as apply for the purposes of giving effect to such an agreement.

Paragraph 3 provides that the competent authorities shall endeavour to resolve by mutual agreement any difficulties or doubts arising over the interpretation or application of the Convention. It also provides they may consult on cases not provided for in this Convention, for the purposes of eliminating double taxation.

Paragraph 4 permits the competent authorities to communicate directly with one another (i.e. not through diplomatic channels) for the purposes of reaching agreement under the Article.

Paragraph 5 permits the competent authorities to settle the application of this Convention by mutual agreement, in particular with regard to the requirements for residents to claim tax reliefs or exemptions provided for under the Convention.

ARTICLE 26 – EXCHANGE OF INFORMATION

This Article contains rules governing the exchange of information between the countries.

Paragraph 1 requires the competent authorities to exchange such information as is foreseeably relevant for carrying out the provisions of the Convention or of their domestic laws. The exchange of information is not restricted by Article 1, which means that information concerning persons not resident in either country may be exchanged. Nor is it restricted by Article 2, which means that information relevant to all taxes, and not just those otherwise covered by the Convention, may be exchanged.

Paragraph 2 provides that information exchanged in accordance with paragraph 1 shall be treated as secret, although it may be disclosed to certain specified persons or authorities. Such information may be disclosed in public court proceedings or in judicial decisions.

Paragraph 3 imposes certain limitations on the exchange of information. Paragraphs 1 and 2 cannot impose an obligation on a country to carry out administrative measures at variance with the laws and administrative practices of either country, to supply information which is not obtainable under the laws or in the normal course of the administration of either country or to supply information that would disclose any trade, business, industrial, commercial or professional secret or trade process, or information whose disclosure would be contrary to public policy.

Paragraph 4 provides that the country from which information is requested shall use its information gathering powers to obtain the requested information even though that country may have no domestic tax interest in that information. The obligation is subject to the limitations of paragraph 3 but a country cannot decline to supply information solely because it has no domestic tax interest in that information.

ARTICLE 27 – DIPLOMATIC AND CONSULAR OFFICERS

This Article ensures that diplomatic or consular officials shall not receive less favourable treatment under the Convention than they are entitled to under international law or under the provisions of special agreements (such as the Vienna Convention on Diplomatic Relations).

ARTICLE 28 – MISCELLANEOUS PROVISIONS

This Article contains a general anti-abuse provision. It ensures that no relief will be available under the Convention where the main purpose, or one of the main purposes, in assigning or creating the relevant shares, debt claims or other rights, is to take advantage of that creation or assignment.

ARTICLE 29 – ENTRY INTO FORCE

This Article contains the provisions governing how and when the Convention will enter into force and take effect.

Paragraph 1 provides that each country will notify the other through diplomatic channels of the completion of the necessary domestic legal procedures required to bring the Convention into force. The Convention will enter into force on the first day of the second month following the date of the later of the notifications from the two countries.

Paragraph 2 provides that it will take effect:

(a) in the case of the United Kingdom for income tax and capital gains tax for any year of assessment beginning on or after 6th April in the calendar year next following the year in which the Convention enters into force. Similarly, for corporation tax, the relevant date is 1st April in the calendar year next following the year in which the Convention enters into force.

(b) in the case of the Kingdom of Saudi Arabia the relevant date is 1st January in the calendar year next following the year in which the Convention enters into force.

ARTICLE 30 – TERMINATION

This Article contains provisions for the termination of the Convention.

This Article provides that the Convention may be terminated by either country giving notice of termination through diplomatic channels. Notice shall be given at least six months before the end of any calendar year after the expiry of five years from the date the Convention enters into force.

In the event of termination, the Convention shall cease to have effect:

(a) in the case of the United Kingdom for 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. The relevant date for corporation tax is 1st April.

(b) in the case of the Kingdom of Saudi Arabia the relevant date is 1st January in the calendar year next following that in which the notice is given.

PROTOCOL

The Protocol contains clarificatory material relating to the Articles above and which forms an integral part of the Convention.

Paragraph 1:

(a) clarifies that the term "person" also includes the State, its political subdivisions or local authorities; and

(b) explains what kind of arrangements are covered by the term "pension scheme".

Paragraph 2: confirms that the Convention applies to pension schemes and charitable organisations.

Paragraph 3: clarifies:

(a) that the profits of a permanent establishment in respect of contracts for survey, construction, supply or installation, should be determined only on the basis of the part of the contract which is carried out by the permanent establishment itself in the country where it is situated, any other part of the contract executed outside that country will not be taken into account in the profits of that permanent establishment; and

(b) the types of businesses covered by the term "business profits"; and that it does not include the performance of personal services by an individual either as an employee or a self-employed person (which is covered by Article 14).

Paragraph 4: confirms that dividends will be exempt from tax in the source country if the beneficial owner of the dividends is a pension scheme resident in the other country.

Paragraph 5: defines the terms "property investment vehicle" and "qualifying dividend" for the purposes of the 15 per cent rate of withholding tax on dividends under sub-paragraph (2)(a) of Article 10.

Paragraph 6: clarifies that re-characterised income which is treated as a dividend under Article 10 is excluded from the term "income from debt-claims".

Paragraph 7: clarifies that:

(a) shares in which there is substantial and regular trading on a stock exchange do not fall under paragraph (4) of Article 13. This is a narrowing of the standard OECD provision which permits a country to tax gains if they relate to the alienation of shares in a company deriving more than 50 per cent of their value directly or indirectly from immovable property situated in that country; and

(b) paragraph (6) of Article 13 shall not affect the right of one country to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is, and has been at any time during the previous six fiscal years, a resident of

that country or on a person who is a resident of that country at any time during the fiscal year in which the property is alienated. It ensures that where during a period of temporary non-residence from the United Kingdom persons who have been resident in the Kingdom of Saudi Arabia can be taxed upon their return to the United Kingdom in respect of any gains made while they were resident in Saudi Arabia.

Paragraph 8:

(a) clarifies that the United Kingdom will give relief for any double taxation arising from the taxation of gains in accordance with 7(b) of the Protocol as if the gains arose from sources in the Kingdom of Saudi Arabia. However, it also clarifies that where gains are taxed by the United Kingdom in accordance with paragraphs 1, 2 or 3 of Article 13, the Kingdom of Saudi Arabia will give relief for any double taxation.

(b) clarifies that Saudi nationals resident in the United Kingdom with income from Saudi Arabian sources are subject in the Kingdom of Saudi Arabia to income tax and not the Zakat, so will be entitled to credit in the United Kingdom only for income tax payable on that income.

Paragraph 9: confirms that as long as the domestic laws of both countries allow, both countries will exchange information held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or information relating to ownership interest in a person. Saudi Arabian law does not at present permit the Saudi Arabian authorities to obtain bank information for their treaty partners.

Paragraph 10: clarifies that the Air Transport Agreement between the United Kingdom and the Kingdom of Saudi Arabia signed in 1993 continues to apply, but where any greater relief is given in a provision under this Convention, that provision will apply.