INCOME TAX

1953 No. 191

The Double Taxation Relief (Taxes on Income) (Finland) Order, 1953

Made - - - - 11th February, 1953

At the Court at Buckingham Palace, the 11th day of February, 1953

Present,

The Queen's Most Excellent Majesty in Council

Whereas it is provided by subsection (1) of section three hundred and forty-seven of the Income Tax Act, 1952(a), that if Her Majesty by Order in Council declares that arrangements specified in the Order have been made with the Government of any territory outside the United Kingdom with a view to affording relief from double taxation in relation to income tax or profits tax and any taxes of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect to the extent specified in that subsection:

And Whereas under certain other provisions of Part XIII of the said Act certain other consequences ensue on the making of any such Order:

And Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of subsection (6) of section three hundred and forty-seven of the said Act and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred on Her by subsection (1) of the said section three hundred and forty-seven and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Finland) Order, 1953.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of Finland with a view to affording relief from double taxation in relation to income tax or profits tax and taxes of a similar character imposed by the laws of Finland; and

(*b*) that it is expedient that those arrangements should have effect.

W. G. Agnew.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE FINNISH GOVERNMENT 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 Finland,

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 Finland:

The State income tax and, for the purposes of Articles VIII and XXI, the State capital tax (hereinafter referred to as " Finnish tax ").

(*b*) 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 ").

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

ARTICLE II

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

(*a*) The term " United Kingdom " means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man ;

(*b*) The term " Finland " means the Republic of Finland ;

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

(*d*) The term " tax " means United Kingdom tax or Finnish tax, as the context requires ;

(*e*) The term " person " includes any body of persons, corporate or not corporate ;

(*f*) The term " company " means any body corporate ;

(*g*) The terms " resident of the United Kingdom " and " resident of Finland " mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Finland for the purposes of Finnish tax, and any person who is resident in Finland for the purposes of Finnish tax and not resident in the United Kingdom for the purposes of United Kingdom tax ; a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Finland if it is incorporated under the laws of Finland and its business is not managed and controlled in the United Kingdom, or if it is not so incorporated but its business is managed and controlled in Finland ;

(*h*) The terms " resident of one of the territories " and " resident of the other territory " mean a person who is a resident of the United Kingdom or a person who is a resident of Finland as the context requires ;

(*i*) The terms " United Kingdom enterprise " and " Finnish enterprise " mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Finland, and the terms " enterprise of one of the territories " and " enterprise of the other territory " mean a United Kingdom enterprise or a Finnish enterprise, as the context requires ;

(*j*) The term "industrial or commercial profits" includes rents or royalties in respect of cinematograph films;

(*k*) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management, factory, or other fixed place of business, a mine, quarry or any other place of natural resources subject to exploitation. It also includes a place where building construction is carried on by contract for a period of at least one year, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connexion—

(i) An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such;

(ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise;

(iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which carries on a trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) Where the present Convention provides that income from a source in one of the territories shall be exempt from tax in that territory if (with or without other conditions) it is subject to tax in the other territory, and under the law in force in that other territory the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof then the exemption to be allowed under the Convention in the first territory shall apply only to so much of the income as is remitted to or received in that other territory.

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

ARTICLE III

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

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

(3) Where an enterprise of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory.

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

ARTICLE IV

Where—

(*a*) an enterprise of one of the territories participates directly or indirectly in the management, control, or capital of an enterprise of the other territory, or

(*b*) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

and 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) The industrial and commercial profits of a Finnish enterprise shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom profits tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom profits tax only at that lower rate.

(2) Where a company which is a resident of Finland controls, directly or indirectly, not less than 50 per cent. of the entire voting power of a company which is a resident of the United Kingdom, distribution by the latter company to the former company shall be left out of account in computing United Kingdom profits tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

ARTICLE VI

Notwithstanding the provisions of Articles III, IV and V, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

ARTICLE VII

(1)—(*a*) Dividends paid by a company which is a resident of the United Kingdom to a resident of Finland, who is subject to tax in Finland in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom surtax.

(*b*) Dividends paid by a company which is a resident of Finland to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Finland through a permanent establishment situated therein, shall not be chargeable to tax in addition to the tax on the profits out of which the dividends are paid at a rate exceeding 5 per cent.

Provided that, where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50 per cent. of the entire voting power of the company paying the dividends, the dividends shall be exempt from any such additional tax on dividends.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

ARTICLE VIII

A resident of the United Kingdom, who owns shares in a company which is a resident of Finland and who does not carry on a trade or business in Finland through a permanent establishment situated therein, shall be exempt from Finnish capital tax on the value of those shares.

ARTICLE IX

(1) Any interest or royalty derived from sources within one of the territories by a resident of the other territory, who is subject to tax in that other territory in respect thereof and does not carry on a trade or business in the first territory through a permanent establishment situated therein, shall be exempt from tax in that first territory; but no exemption shall be allowed in respect of interest paid by a company which is a resident of one of the territories to a company which is a resident of the other territory where the latter company controls, either directly or indirectly, more than 50 per cent. of the entire voting power of the former company.

(2) In this Article:

(*a*) The term "interest" includes interest on bonds, securities, notes, debentures or on any other form of indebtedness.

(*b*) The term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

(3) Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by this Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.

(4) Any capital sum derived from one of the territories from the sale of patent rights by a resident of the other territory, who does not carry on a trade or business in the first territory through a permanent establishment situated therein, shall be exempt from tax in that first territory.

ARTICLE X

Income of whatever nature derived from real property within one of the territories (except interest on mortgages secured on real property) shall be chargeable to tax in accordance with the laws of that territory. Where the said income is also chargeable to tax in the other territory, relief for the tax payable in the first territory shall be given against the tax payable on that income in the other territory in accordance with Article XIX.

ARTICLE XI

(1) Where, under the provisions of the present Convention, a resident of the United Kingdom is exempt or entitled to relief from Finnish tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the United Kingdom.

(2) Finnish tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is a resident of the United Kingdom, be allowed as a credit under Article XIX.

ARTICLE XII

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer or exchange of capital assets.

ARTICLE XIII

(1) Remuneration, including pensions, paid by, or out of funds created by, one Contracting Party to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party, unless the individual is a national of that other Party without being also a national of the first Party.

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

ARTICLE XIV

(1) An individual who is a resident of the United Kingdom shall be exempt from Finnish tax on profits or remuneration in respect of personal (including professional) services performed within Finland in any year of assessment if—

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

(*b*) the services are performed for or on behalf of a resident of the United Kingdom, and

(*c*) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of Finland shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment, if—

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

(*b*) the services are performed for or on behalf of a resident of Finland, and

(*c*) the profits or remuneration are subject to Finnish tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artists, musicians and athletes.

ARTICLE XV

(1) Any pension (other than a pension of the kind referred to in paragraph (1) of Article XIII) and any annuity, derived from sources within Finland by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Finnish tax.

(2) Any pension (other than a pension of the kind referred to in paragraph (1) of Article XIII) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Finland and subject to Finnish tax in respect thereof, shall be exempt from United Kingdom tax.

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

ARTICLE XVI

A professor or teacher from one of the territories, who receives remuneration for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

ARTICLE XVII

A student or business apprentice from one of the territories, who is receiving full-time education or training in the other territory, shall be exempt from tax in that other territory on payments made to him by persons in the first territory for the purposes of his maintenance, education or training.

ARTICLE XVIII

(1) Individuals who are residents of Finland 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 Finnish tax as Finnish nationals not resident in Finland.

ARTICLE XIX

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

(2) 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, Finnish tax payable, whether directly or by deduction, in respect of income from sources within Finland shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Finland, the credit shall take into account (in addition to any Finnish tax appropriate to the dividend) the Finnish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Finnish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(3) Income from sources within the United Kingdom which under the laws of the United Kingdom and in accordance with the present Convention is subject to tax in the United Kingdom either directly or by deduction shall be exempt from Finnish tax: provided that the rate of Finnish tax to be imposed on a resident of Finland may be calculated as though income exempted under the Convention were included in the total income of that resident.

(4) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

ARTICLE XX

(1) The taxation authorities of the Contracting Parties 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 legal avoidance in relation to the taxes which are the subject of the 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 taxes which are the subject of the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

(2) As used in this Article, 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 Finland the Taxation Department of the Ministry of Finance or its 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 Convention applies.

ARTICLE XXI

(1) The nationals of one Contracting Party shall not be subjected in the territory of the other Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

(2) The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or in partnership, shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like profits or capital.

(3) The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first territory are or may be subjected in respect of the like income, profits and capital.

(4) Nothing in paragraph (1) or paragraph (2) of this Article shall be construed as obliging one Contracting Party to grant to nationals of the other Contracting Party who are not resident in the territory of the former Party the same personal allowances, reliefs and reductions for tax purposes as are granted to its own nationals.

(5) In this Article the term "nationals" means:

(*a*) in relation to Finland, all Finnish citizens and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Finland;

(*b*) in relation to the United Kingdom, all British subjects and British protected persons residing in the United Kingdom or in any British territory to which the present Convention is extended under Article XXII, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in any British territory to which the Convention applies.

(6) In this Article the term "taxation" means taxes of every kind and description levied on behalf of any authority whatsoever.

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 Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in notes to be exchanged for this purpose.

(2) The termination in respect of Finland or the United Kingdom of the present Convention under Article XXV shall, unless otherwise expressly agreed by the Contracting Parties, terminate the application of the present Convention to any territory to which it has been extended under this Article.

ARTICLE XXIII

The following Agreements between the Contracting Parties shall not have effect in relation to any tax for any period for which the present Convention has effect as respects that tax:—

(1) The Agreement dated 18th November, 1925(a), between the United Kingdom and Finland for the reciprocal exemption from income tax in certain cases of profits accruing from the business of shipping;

(2) The Agreement dated 21st February, 1935(b), between the United Kingdom and Finland for the reciprocal exemption from income tax in certain cases of profits or gains arising through an agency.

ARTICLE XXIV

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

(2) The present Convention shall enter into force upon exchange of ratifications.

ARTICLE XXV

Upon the entry into force of the present Convention in accordance with Article XXIV the foregoing provisions of the Convention shall have effect:

(*a*) In Finland:

as respects Finnish tax for any year of assessment beginning on or after 1st January, 1951, and chargeable on the income or capital of the year 1950 or thereafter;

(*b*) In the United Kingdom:

as respects income tax for any year of assessment beginning on or after 6th April, 1951;

as respects surtax for any year of assessment beginning on or after 6th April, 1950; and

as respects profits tax in respect of the following profits:—

(i) profits arising in any chargeable accounting period beginning on or after 1st April, 1951;

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

(iii) profits not so arising or attributable by reference to which income tax is, or but for the present Convention would be, chargeable for any year of assessment beginning on or after 6th April, 1951.

ARTICLE XXVI

The present Convention shall continue in force indefinitely but either Contracting Party may, on or before 30th June in any calendar year not earlier than the year 1955, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event, the Convention shall cease to be effective:

(*a*) In Finland:

as respects Finnish tax for any year of assessment beginning on or after 1st January next following the date on which notice is given and chargeable on the income or capital of the year in which the notice is given.

(a) S.R. & O. 1925/1353; Rev. X, p. 388; 1925, p. 597.
(b) S.R. & O. 1935/304; Rev. X, p. 385; 1935, p. 663.

(*b*) In the United Kingdom:

as respects income 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;

as respects surtax for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and

as respects profits tax in respect of the following profits:—

(i) profits arising in any chargeable accounting period beginning on or after 1st April in the calendar year next following that in which the notice is given;

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

(iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after 6th April in the next following calendar year.

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

Done at London in duplicate, in the English and Finnish languages, both texts being equally authoritative, on the 12th day of December, one thousand nine hundred and fifty one.

(L.S.) ANTHONY EDEN.

(L.S.) EERO A. WUORI.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Under the Convention with Finland which is scheduled to this Order certain classes of income derived from one country by a resident of the other country are (subject to certain conditions) to be exempt from tax in the former country. These classes are shipping and air transport profits, certain trading profits not arising through a permanent establishment, patent and copyright royalties, interest, pensions other than Government pensions, purchased annuities and earnings of temporary business visitors. Government salaries and pensions are normally to be taxed by the paying Government only. Remuneration of visiting professors and teachers is to be exempt in the country visited.

As regards dividends, the Convention provides that dividends received by a United Kingdom company from a Finnish subsidiary in which it controls at least 50 per cent. of the voting power are to be exempt from Finnish tax, while the rate of Finnish tax on other dividends received from Finland by United Kingdom residents is not generally to exceed 5 per cent. Dividends received from the United Kingdom by Finnish residents are to be exempt from United Kingdom surtax.

Residents of Finland are to be entitled to the same personal allowances as British subjects resident abroad and corresponding arrangements are to be extended by Finland to residents of the United Kingdom.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence by reference to the tax payable in the country of origin of the income.

Provision is included for the exchange of information between the taxation authorities of the two countries.

The Convention is to take effect for the fiscal year 1951-52.