1955 No. 423

The Double Taxation Relief (Taxes on Income) (South Africa) Order, 1955

Made - - - - 17th March, 1955

At the Court at Buckingham Palace, the 17th day of March, 1955

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), as amended by subsection (2) of section seventy of the Finance Act, 1952(b), 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, profits tax or excess profits levy 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 as so amended:

And Whereas under certain other provisions of Part XIII of the Income Tax Act, 1952, certain other consequences ensue on the making of any such Order:

And Whereas His late Majesty King George VI, in pursuance of the Regency Acts, 1937 and 1943(c), was pleased, by Letters Patent dated the 24th day of January, 1947, to delegate and grant unto His Royal Highness The Duke of Gloucester, Her Royal Highness The Princess Royal and Viscount Lascelles, or any two of them, as Counsellors of State, full power and authority during the period of His late Majesty's absence from the United Kingdom to summon and hold on His late Majesty's behalf His Privy Council and to signify thereat His late Majesty's approval of any matter or thing to which His late Majesty's approval in Council was required:

And Whereas His Royal Highness The Duke of Gloucester and Her Royal Highness The Princess Royal being authorised thereto by the said Letters Patent, and in exercise of the powers conferred by subsection (1) of section fifty-one of the Finance (No. 2) Act, 1945(d), and of all other powers enabling His late Majesty in that behalf, by the Double Taxation Relief (Taxes on Income) (South Africa) Order, 1947(e), in Council declared that the arrangements specified in the Agreement set out in the Schedule to that Order had been made with His late Majesty's Government in the Union of South Africa with a view to affording relief from double taxation in relation to income tax, excess profits tax or the national defence contribution and taxes of a similar character imposed by the laws of South Africa and that it was expedient that those arrangements should have effect:

And Whereas the further arrangements set out in the Schedule hereto have been agreed with Her Majesty's Government in the Union of South Africa with a view to affording such relief as aforesaid by way of variation of the arrangements set out by the Schedule to the said Order:

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (b) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 33.
(c) 1 Edw. 8 & 1 Geo. 6. c. 16 and 6 & 7 Geo. 6. c. 42.
(d) 9 & 10 Geo. 6. c. 13. (e) S.R. & O. 1947/315 (Rev. X, p. 498: 1947 I, p. 1177).

And Whereas it is expedient that the said further arrangements should have effect:

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 Income Tax Act, 1952, 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) (South Africa) Order, 1955.

2. It is hereby declared—

(*a*) that the arrangements specified in the Supplementary Protocol set out in the Schedule to this Order have been made with Her Majesty's Government in the Union of South Africa with a view to affording relief from double taxation in relation to income tax, profits tax or excess profits levy and taxes of a similar character imposed by the laws of South Africa varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (South Africa) Order, 1947; and

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

W. G. Agnew.

SCHEDULE

SUPPLEMENTARY PROTOCOL AMENDING THE AGREEMENT BETWEEN HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND HIS MAJESTY'S GOVERNMENT IN THE UNION OF SOUTH AFRICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 14TH OCTOBER, 1946.

Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland and Her Majesty's Government in the Union of South Africa,

Desiring to conclude a supplementary Protocol amending the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 14th October, 1946, have agreed as follows:

ARTICLE I

Article V of the Agreement of the 14th October, 1946, is hereby amended to read as follows:

"(1) The Union shall exempt all income derived by the United Kingdom Government or by a resident of the United Kingdom from operating ships or aircraft from income tax and all other taxes on profits or income which are or may become chargeable in the Union of South Africa.

(2) The United Kingdom shall exempt all income derived by the Government of the Union or by a resident of the Union from operating ships or aircraft from income tax and all other taxes on profits or income which are or may become chargeable in the United Kingdom."

ARTICLE II

There shall be inserted after Article XII of the Agreement of the 14th October, 1946, the following Article:

"ARTICLE XIIA

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 resident in the first territory for the purposes of his maintenance, education or training."

ARTICLE III

This supplementary Protocol shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and the Union as are necessary to give it the force of law in the United Kingdom and the Union respectively and shall thereupon have effect—

(*a*) in the United Kingdom:

as respects income tax (including surtax) for any year of assessment beginning on or after 6th April, 1948;

as respects profits tax and excess profits levy in respect of the following profits—

(i) profits by reference to which income tax is, or but for the present Agreement would be, chargeable for any year of assessment beginning on or after 6th April, 1948;

(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 1st April, 1948, 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 the Union:

as respects profits derived or deemed to have been derived during the year of assessment ending on the 30th day of June, 1949, and subsequent years.

IN WITNESS WHEREOF the undersigned, being duly authorised, have signed this supplementary Protocol.

DONE, at Pretoria, in duplicate, in the English and Afrikaans languages, on this the fifth day of November, nineteen hundred and fifty-four.

FOR HER MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM:

(L.S.) *J. H. Le Rougetel.*

FOR HER MAJESTY'S GOVERNMENT IN THE UNION:

(L.S.) *N. C. Havenga.*

EXPLANATORY NOTE

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

Under Article V of the Agreement between the United Kingdom and the Union of South Africa, which is scheduled to the Double Taxation Relief (Taxes on Income) (South Africa) Order, 1947, profits derived by a resident of one country from the operation of ships or aircraft registered in the same country are exempted from certain named taxes in the other country. Article I of the Supplementary Protocol (*a*) removes the registration qualification and (*b*) applies the exemption to all the taxes charged on income and profits in the two countries (which include taxes charged in the Provinces of the Union).

Article II of the Supplementary Protocol provides that payments for the education and maintenance of visiting students are, subject to certain conditions, to be exempt from tax in the country visited.

The Supplementary Protocol is to take effect for the fiscal year 1948-49.