1958 No. 1751

The Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1958

Laid before the House of Commons in draft
Made - - - - 22nd October, 1958

At the Court at Buckingham Palace, the 22nd day of October, 1958

Present,

The Queen's Most Excellent Majesty in Council

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(a), 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 upon Her by subsection (1) of the said section three hundred and forty-seven, as amended by subsection (2) of section seventy of the Finance Act, 1952(b), 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) (U.S.A.) Order, 1958.

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 the Government of the United States of America with a view to affording relief from double taxation in relation to income tax, profits tax and taxes of a similar character imposed by the laws of the United States of America varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1946(c), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1955(d); 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. (b) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 33.
(c) S.R. & O. 1946/1327 (Rev. X, p. 526: 1946 I, p. 885).
(d) S.I. 1955/162 (1955 I, p. 1013).

SCHEDULE

SUPPLEMENTARY PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON THE 16TH APRIL 1945, AS MODIFIED BY THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON THE 6TH JUNE 1946 AND BY THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON THE 25TH MAY 1954

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America,

Desiring to conclude a further supplementary Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on the 16th April 1945, as modified by the supplementary Protocol signed at Washington on the 6th June 1946 and by the supplementary Protocol signed at Washington on the 25th May 1954,

Have agreed as follows:

ARTICLE I

Paragraphs (1) and (2) of Article VIII of the Convention of the 16th April 1945 for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income are hereby amended to read as follows:

"(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulæ, trade marks and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts shall be exempt from United States tax (*a*) if such resident is not engaged in trade or business in the United States through a permanent establishment situated therein or (*b*) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment.

"(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulæ, trade marks and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts shall be exempt from United Kingdom tax (*a*) if such resident is not engaged in trade or business in the United Kingdom through a permanent establishment situated therein or (*b*) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment."

ARTICLE II

Paragraph (1) of Article XIII of the said Convention is hereby amended to read as follows:

"(1) Subject to Sections 901 to 905 of the United States Internal Revenue Code as in effect on the 1st day of January 1956, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose

(*a*) the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom tax appropriate to such dividend, and

(*b*) the recipient of any royalty or other amount coming within the scope of Article VIII of the present Convention shall be deemed to have paid any United Kingdom tax legally deducted from the royalty or other amount by the person by or through whom any payment thereof is made,

if the recipient of the dividend or royalty or other amount, as the case may be, elects to include in his gross income for the purposes of United States tax the amount of such United Kingdom income tax."

ARTICLE III

(1) This supplementary Protocol shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) This supplementary Protocol shall enter into force upon the exchange of instruments of ratification and shall thereupon have effect—

(*a*) In the United Kingdom:

(i) as respects income tax and surtax for any year of assessment beginning on or after the 6th April 1956;

(ii) as respects profits tax for any chargeable accounting period beginning on or after the 1st April 1956, and for the unexpired portion of any chargeable accounting period current at that date.

(*b*) In the United States:

As respects taxable years beginning on or after the 1st January 1956.

IN WITNESS WHEREOF the undersigned, being authorised thereto by their respective Governments, have signed this supplementary Protocol and have affixed thereto their seals.

DONE in duplicate at Washington this nineteenth day of August, 1957.

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

(L.S.) HAROLD CACCIA.

For the Government of the United States of America:

(L.S.) JOHN FOSTER DULLES.

EXPLANATORY NOTE

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

Article VIII of the Convention between the United Kingdom and the United States of America which is scheduled to the Double Taxation Relief (Taxes on Income) (U.S.A.) Order, 1946, provides that a person resident in one of the countries and subject to tax there on copyright and patent royalties and similar payments derived from sources in the other country shall not be taxed on those payments in that other country unless he is engaged in trade or business through a "permanent establishment" there. Thus patent royalties paid by a United Kingdom licensee to a United States licensor are liable to tax in the United Kingdom only if the licensor has a permanent establishment here. The effect of the amendment made by the supplementary Protocol contained in the Schedule to this Order is to limit the charge to tax in each country to royalties which are directly associated with the business of the permanent establishment. The supplementary Protocol also provides for the giving of credit in the United States for United Kingdom tax deducted from royalties arising in this country which fall outside the scope of the new exemption.

The change is to take effect in the United Kingdom as from the fiscal year 1956-57.