STATUTORY INSTRUMENTS

1967 No. 1925

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Malaysia) Order 1967

Laid before the House of Commons in draft

Made - - - - 20th December 1967

At the Court at Buckingham Palace, the 20th day of December 1967

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 section 347(6) 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 section 347(1) of the said Income Tax Act 1952, as amended by section 17 of the Finance Act 1961(b) and by section 39 and section 64 of the Finance Act 1965(c), 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) (Malaysia) Order 1967.

2. It is hereby declared—

(*a*) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of Malaysia with a view to affording relief from double taxation in relation to income tax, profits tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Malaysia; 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) 9 & 10 Eliz. 2. c. 36. (c) 1965 c. 25.

SCHEDULE

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

Whereas on 30 August, 1963, the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Malaya concluded an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

And whereas on 16 September, 1963, (hereinafter called "Malaysia Day"), Malaysia was formed;

Now, therefore, the Government of Malaysia and the Government of the United Kingdom of Great Britain and Northern Ireland have agreed as follows:

ARTICLE 1

(1) The said Agreement of 30 August, 1963, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Malaya, which appears as the Annex to this Agreement, subject to the modifications provided by Article 2 of the present Agreement, shall be deemed to have had effect from and after Malaysia Day in relation to those territories which have been comprised in Malaysia since 9 August, 1965, and shall continue to have effect in relation to those territories and in the said Agreement as so modified the term "Federation of Malaya" or "Federation" shall wherever the context admits be construed as referring to the said territories.

(2) The said Agreement of 30 August, 1963, may, subject to and in accordance with Article XXII thereof, be extended to any territory for whose international relations Malaysia is responsible.

ARTICLE 2

(1) The modifications of the said Agreement of 30 August, 1963, which are referred to in Article 1 of this Agreement, are specified in the succeeding paragraphs of this Article.

(2) For paragraph (1) of Article I of the said Agreement the following shall be substituted—

"(1) The taxes which are the subject of the present Agreement are—

(*a*) in those territories comprised immediately before Malaysia Day in the Federation of Malaya (and hereinafter referred to as 'Federation tax') the income tax (including the tin profits tax);

(*b*) in Sabah (and hereinafter referred to as 'Federation tax') the income tax;

(*c*) in Sarawak (and hereinafter referred to as 'Federation tax') the salaries tax, the corporation profits tax, the business profits tax and the interest tax;

(*d*) in the United Kingdom of Great Britain and Northern Ireland (and hereinafter referred to as 'United Kingdom tax') the income tax (including surtax), the profits tax, the corporation tax and the capital gains tax."

(3) At the end of Article VII there shall be added the following paragraphs—

"(6) Subject to the provisions of paragraph (4A) of Article VIII of this Agreement the term 'dividends' in the case of the United Kingdom includes any item which under the law of the United Kingdom is treated as a distribution of a company except that this term does not include any redeemable share capital or security issued by a company in respect of shares in the company otherwise than wholly for new consideration, or such part of any redeemable share capital or security so issued as is not properly referable to new consideration.

(7) If the recipient of a dividend is a company which owns 10 per cent. or more of the class of shares in respect of which the dividend is paid then neither paragraph (1) nor paragraph (2) shall 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 purpose of securing the benefit of this Article."

(4) In Article VIII there shall be inserted after paragraph (4) a new paragraph as follows—

"(4A) Royalties paid by a company which is a resident of the United Kingdom to a resident of the Federation shall not be treated as a distribution of that company. The preceding sentence shall not apply to royalties paid to a company where—

(*a*) the same persons participate directly or indirectly in the management or control of the company paying the royalties and the company deriving the royalties, and

(*b*) more than 50 per cent. of the voting power in the company deriving the royalties is controlled directly or indirectly by a person or persons resident in the United Kingdom."

(5) For paragraphs (2) and (3) of Article XVIII of the said Agreement the following shall be substituted—

"(2) (*a*) Subject to the provisions of the laws of the Federation regarding the allowance as a credit against Federation tax of tax payable in any country other than the Federation and subject to sub-paragraph (*c*) of this paragraph, 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 Federation tax payable in respect of that income.

(*b*) Where such income is an ordinary dividend paid before 6 April, 1966, by a company which is a resident of the United Kingdom, the credit shall take into account (in addition to any United Kingdom income tax appropriate to the dividend) the United Kingdom profits tax payable in respect of its profits by the company paying the dividend; 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 United Kingdom profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(*c*) Where such income is a dividend paid after 5 April, 1966, by a company which is a resident of the United Kingdom, the credit shall not take into account United Kingdom tax which is not chargeable specifically on the dividend but is tax (whether deducted from the dividend or not) chargeable in respect of the profits or income of the company paying the dividend. Where, however, the dividend is paid to a company which is a resident of the Federation and which controls directly or indirectly not less than 10 per cent. of the voting power in the United Kingdom company, the credit shall take into account (in addition to any United Kingdom income tax chargeable specifically on the dividend) the United Kingdom tax payable in respect of its profits by the company paying the dividend.

(3) (*a*) Subject to the provisions of the laws of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom and subject to sub-paragraph (*c*) of this paragraph, Federation tax payable, whether directly or by deduction, in respect of income from sources within the Federation shall be allowed as a credit against the United Kingdom tax payable in respect of that income.

(*b*) Where such income is an ordinary dividend paid before 6 April, 1966, by a company which is a resident of the Federation, the credit shall take into account (in addition to any Federation tax appropriate to the dividend) Federation 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, Federation tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(*c*) Where such income is a dividend paid after 5 April, 1966, by a company which is a resident of the Federation, the credit shall not take into account Federation tax which is not chargeable specifically on the dividend but is tax (whether deducted from the dividend or not) chargeable in respect of the profits or income of the company paying the dividend. Where, however, the dividend is paid to a company which is resident in the United Kingdom and which controls directly or indirectly not less than 10 per cent. of the voting power in the Federation company the credit shall take into account (in addition to any Federation tax appropriate to the dividend) Federation tax payable in respect of its profits by the company paying the dividend."

(6) For sub-paragraphs (*a*) and (*b*) of paragraph (1) of Article XXIII of the said Agreement the following shall be substituted—

"(*a*) in those territories comprised immediately before Malaysia Day in the Federation of Malaya:

as respects income tax, for any year of assessment beginning on or after 1 January, 1962;

(*b*) in Sabah:

as respects income tax, for any year of assessment beginning on or after 1 January, 1964;

(*c*) In Sarawak:

as respects salaries tax, corporation profits tax, business profits tax and interest tax, for any year of assessment beginning on or after 1 January, 1964;

(*d*) in the United Kingdom:

(i) as respects income tax, for any year of assessment beginning on or after 6 April, 1962;

(ii) as respects surtax, for any year of assessment beginning on or after 6 April, 1961;

(iii) as respects profits tax, for any chargeable accounting period beginning on or after 1 January, 1962, and for the unexpired portion of any chargeable accounting period current at that date;

(iv) as respects corporation tax, for any financial year beginning on or after 1 April, 1964; and

(v) as respects capital gains tax, for any year of assessment beginning on or after 6 April, 1965."

(7) For paragraph (2) of Article XXIII of the said Agreement the following shall be substituted—

"(2) The Arrangements for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which were made in 1949 and 1950 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Governments of the Federation of Malaya, of Sabah and of Sarawak shall terminate and cease to be effective as respects taxes to which the present Agreement in accordance with paragraph (1) of this Article applies.

Provided that in a case where any provision of the Arrangements made in 1949 and 1950 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Governments of the Federation of

Malaya, of Sabah and of Sarawak would have afforded greater relief from tax than any corresponding provision of the present Agreement, the first-mentioned provision shall nevertheless continue to have effect—

(*a*) in the Federation for any year of assessment beginning before the present Agreement enters into force;

(*b*) in the United Kingdom:

(i) as respects income tax (including surtax), for any year of assessment beginning before the present Agreement enters into force;

(ii) as respects profits tax and corporation tax, for any accounting period beginning before the present Agreement enters into force."

(8) For sub-paragraphs (*a*) and (*b*) of paragraph (1) of Article XXIV of the said Agreement the following shall be substituted—

"(*a*) in the Federation:

for any year of assessment beginning on or after 1 January in the calendar year next following that in which such notice is given;

(*b*) in the United Kingdom:

(i) as respects income tax, surtax and capital gains tax, for any year of assessment beginning on or after 6 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 notice is given."

ARTICLE 3

The present Agreement shall come into force on the date when the last of all such things shall have been done in Malaysia and in the United Kingdom of Great Britain and Northern Ireland as are necessary to give this Agreement the force of law in Malaysia and the United Kingdom of Great Britain and Northern Ireland respectively.

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

DONE in duplicate at Kuala Lumpur the 17th day of July, one thousand nine hundred and sixty-seven.

For the Government of Malaysia:
TAN SIEW SIN

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

ANNEX

United Kingdom/Federation of Malaya
Double Taxation Agreement

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATION OF MALAYA 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 the Federation of Malaya,

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 I

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

(*a*) In the Federation of Malaya (and hereinafter referred to as " Federation tax ")

The income tax;

(*b*) In the United Kingdom of Great Britain and Northern Ireland (and hereinafter referred to as " United Kingdom tax ")

The income tax (including surtax) and the profits tax.

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed in the Federation of Malaya or the United Kingdom subsequently to the date of signature of the present Agreement, or by the Government of any territory to which the present Agreement is extended under Article XXII.

ARTICLE II

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

(*a*) the term " Federation " means the Federation of Malaya;

(*b*) the term " United Kingdom " means Great Britain and Northern Ireland;

(*c*) the terms " one of the Contracting States " and " the other Contracting State " mean the Federation or the United Kingdom, as the context requires;

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

(*e*) the term " company " means any body corporate;

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

(*g*) the term " resident of the Federation " means any person who is resident in the Federation for the purposes of Federation tax and not resident in the United Kingdom for the purposes of United Kingdom tax; the term " resident of the United Kingdom " means any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the Federation for the purposes of Federation tax; and a company shall be regarded as resident in the Federation if its business is managed and controlled in the Federation and as resident in the United Kingdom if its business is managed and controlled in the United Kingdom;

(*h*) the terms " resident of one of the Contracting States " and " resident of the other Contracting State " mean a resident of the Federation or a resident of the United Kingdom, as the context requires;

(*i*) the terms " Federation enterprise " and " United Kingdom enterprise " mean, respectively, an industrial, mining, commercial, plantation, or agricultural enterprise or undertaking carried on by a resident of the Federation and an industrial, mining, commercial, plantation, or agricultural enterprise or undertaking carried on by a resident of the United Kingdom;

(*j*) the terms " enterprise of one of the Contracting States " and " enterprise of the other Contracting State " mean a Federation enterprise or a United Kingdom enterprise, as the context requires;

(*k*) the terms " profits of a Federation enterprise " and " profits of a United Kingdom enterprise " do not include rents or royalties in respect of motion picture films or of tapes for television broadcasting or of mines, oil wells, quarries or other places of extraction of natural resources, or income in the form of dividends, interest, rents, royalties, or capital gains, or fees or other remuneration derived from the management, control or supervision of the trade, business, or other activity of another enterprise or concern, or remuneration for labour or personal services, or profits derived from the operation of ships or aircraft;

(*l*) (i) subject to the provisions of this sub-paragraph, 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, oil well, quarry or other place of extraction of natural resources;

(*gg*) a building site or construction or assembly project which exists for more than six months:

(*hh*) a farm or plantation:

(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 six 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 (3) of Article XII 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 independent status to whom sub-paragraph (*l*)(vi) applies—shall be deemed to be a permanent establishment in the former Contracting State if:

(*aa*) he has, and habitually exercises in that 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 that 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 independent status, where such persons are acting in the ordinary course of their business;

(vii) 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 Contracting State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other;

(*m*) the term "taxation authorities" means, in the case of the Federation, the Minister of Finance or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which the present Agreement is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Agreement applies.

(2) In the application of the provisions of the present Agreement by the Government of 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 of that Contracting State relating to the taxes which are the subject of the present Agreement.

ARTICLE III

Where under the present Agreement a person is entitled to exemption from tax in one of the Contracting States on certain income if (with or without further conditions) he is subject to tax in the other Contracting State in respect thereof and he is subject to tax there by reference to the amount of that income which is remitted to, or received in, that other Contracting State the amount of that income on which exemption is to be allowed in the first-mentioned Contracting State shall be limited to the amount so remitted or received.

ARTICLE IV

(1) (*a*) The profits of a Federation enterprise shall be taxable only in the Federation unless the enterprise carries on business in the United Kingdom through a permanent establishment situated in the United Kingdom. If the enterprise carries on business as aforesaid, tax may be imposed in the United Kingdom on the profits of the enterprise but only on so much of them as is attributable to that permanent establishment.

(*b*) The profits of a United Kingdom enterprise shall be taxable only in the United Kingdom unless the enterprise carries on business in the Federation through a permanent establishment situated in the Federation. If the enterprise carries on business as aforesaid, tax may be imposed in the Federation on the profits of the enterprise 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 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 all expenses, including executive and general administrative 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, 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.

ARTICLE V

Where

(*a*) either

(i) 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

(ii) 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

(*b*) 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 VI

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, unless the ships or aircraft are operated wholly or mainly between places within that other Contracting State.

ARTICLE VII

(1) Dividends paid by a company resident in the United Kingdom to a resident of the Federation who is subject to Federation tax in respect thereof shall be exempt from any tax in the United Kingdom which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Dividends paid by a company resident in the Federation to a resident of the United Kingdom who is subject to United Kingdom tax in respect thereof shall be exempt from any tax in the Federation which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company:

Provided that nothing in this paragraph shall affect the provisions of the Federation law under which the tax in respect of a dividend paid by a company resident in the Federation from which Federation tax has been, or has been deemed to be, deducted may be adjusted by reference to the rate of tax appropriate to the Federation year of assessment immediately following that in which the dividend was paid.

(3) Where a company which is a resident 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 company to persons not resident in that other Contracting State, 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.

(4) The provisions of paragraphs (1) and (2) shall not apply if the recipient of the dividends, being a resident of a Contracting State, has in the other Contracting State, in which the company paying the dividends is resident, a permanent establishment with which the holding by virtue of which the dividends are paid is effectively connected. In such a case, Article IV concerning the allocation of profits to permanent establishments shall apply.

(5) If the system of taxation applicable in either of the Contracting States to the profits and distributions of companies is altered the taxation authorities may consult each other in order to determine whether it is necessary for this reason to amend the provisions of paragraphs (1) and (2) of this Article.

ARTICLE VIII

(1) Royalties derived from sources within one of the Contracting States by a resident of the other Contracting State who is subject to tax in that other Contracting State in respect thereof shall be exempt from tax in the first-mentioned Contracting State.

(2) The term "royalties" as used in this Article means payments of any kind received as consideration for the use of, or the right to use, any copyright, 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 any royalty or other amount paid in respect of motion picture films or of tapes for television broadcasting or of the operation of a mine, oil well, quarry or any other place of extraction of natural resources.

(3) Sums derived by a resident of one of the Contracting States from sources within the other Contracting State from the alienation of any right or property from which royalties, as defined in paragraph (2) of this Article, are or may be derived, shall be exempt from tax in the other Contracting State.

(4) The provisions of paragraphs (1) and (3) of this Article shall not apply to royalties or sums received by a resident of one of the Contracting States where such royalties or sums are attributable to a permanent establishment of such resident in the other Contracting State; in such event, such royalties or sums as are attributable to that permanent establishment shall be treated as if they were profits to which the provisions of Article IV 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 of the royalties or sums paid, having regard to the use, right, property or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship and dealing with each other at arm's length, 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 laws of each Contracting State, due regard being had to the other provisions of the present Agreement.

ARTICLE IX

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

ARTICLE X

(1) (*a*) Remuneration (not being a pension) paid by the Government or any State government or local authority of the Federation to any individual in respect of services rendered in the discharge of governmental functions shall be exempt from United Kingdom tax.

(*b*) Any pension paid by the Government or any State government or local authority of the Federation to any individual in respect of services rendered in the discharge of governmental functions shall be exempt from United Kingdom tax if the individual is not ordinarily resident in the United Kingdom.

(2) (*a*) Remuneration (not being a pension) 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 Federation tax.

(*b*) Any pension 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 Federation tax unless the individual has been admitted to the Federation for permanent residence and is in fact resident there.

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

ARTICLE XI

(1) Subject to the provisions of this Article and Articles X, XII, XIII, XIV and XV, salaries, wages and other similar remuneration derived by a resident of one of the Contracting States 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) In relation to remuneration of a director of a company derived from the company, the provisions of this Article and of Article XII shall apply as if the remuneration were remuneration of an employee in respect of an employment. Notwithstanding the previous provisions of this Article, directors' fees and similar payments derived by a resident of one of the Contracting States 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.

(3) A resident of one of the Contracting States shall be exempt from tax in the other Contracting State in respect of remuneration for services performed on ships or aircraft operating outside the other Contracting State.

ARTICLE XII

(1) An individual who is a resident of the Federation shall be exempt from United Kingdom tax on remuneration or profits 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 person who is a resident of the Federation, and

(*c*) the remuneration or profits are subject to Federation tax, and

(*d*) the remuneration or profits are not directly deductible from the profits for United Kingdom tax purposes of a permanent establishment in the United Kingdom of that person.

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

(*a*) he is present within the Federation 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 person who is a resident of the United Kingdom, and

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

(*d*) the remuneration or profits are not directly deductible from the profits for Federation tax purposes of a permanent establishment in the Federation of that person.

(3) The provisions of this Article shall not apply to the remuneration or profits derived from one of the Contracting States of public entertainers (such as stage, motion picture, radio, or television artistes, musicians, and athletes) whose visit to that Contracting State is not directly or indirectly supported, wholly or substantially, from the public funds of the Government of the other Contracting State.

ARTICLE XIII

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

(2) Any pension (other than a pension of the kind referred to in paragraph (2) of Article X) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of the Federation and subject to Federation 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 XIV

An individual, who is a resident of one of the Contracting States immediately before making a visit to the other Contracting State, and who makes such visit at the invitation of a university, college, school or other recognised educational institution in the other Contracting State, solely for the purpose of teaching at such educational institution for a period not exceeding two years shall be exempt from tax of that other Contracting State on his remuneration for such teaching.

ARTICLE XV

(1) An individual, who immediately before visiting one of the Contracting States is a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State solely as a student at a recognised university, college or school in the first-mentioned Contracting State, or as a business apprentice therein, shall be exempt from tax in the first-mentioned Contracting State on—

(*a*) all remittances from the second-mentioned Contracting State for the purposes of his maintenance, education or training; and

(*b*) any remuneration for personal services rendered in the first-mentioned Contracting State with a view to supplementing the resources available to him for such purposes.

(2) An individual, who immediately before visiting one of the Contracting States, is a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State for a period not exceeding two years for the purpose of study, research or training solely as a recipient of a grant, allowance or award from a scientific, educational, religious or charitable organisation or under a technical assistance programme entered into by the Government of one of the Contracting States shall be exempt from tax in the first-mentioned Contracting State on—

(*a*) the amount of such grant, allowance or award, and

(*b*) any remuneration for personal services rendered in the first-mentioned Contracting State provided such services are in connection with his study, research or training or are incidental thereto.

(3) An individual, who immediately before visiting one of the Contracting States, is a resident of the other Contracting State and is temporarily present in the first-mentioned Contracting State for a period not exceeding twelve months solely as an employee of, or under contract with, the Government or an enterprise of the second-mentioned Contracting State for the purpose of acquiring technical, professional or business experience shall be exempt from tax in the first-mentioned Contracting State on—

(*a*) all remittances from the second-mentioned Contracting State for the purposes of his maintenance, education or training; and

(*b*) any remuneration, so far as it is not in excess of 500 pounds sterling or 4,250 Malayan Dollars as the case may be, for personal services rendered in the first-mentioned Contracting State, provided such services are in connection with his studies or training or are incidental thereto.

ARTICLE XVI

(1) Individuals who are residents of the Federation shall be entitled to the same personal allowances, reliefs and reductions for 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 Federation tax as Federation citizens not resident in the Federation.

ARTICLE XVII

For the purposes of the present Agreement:

(1) Dividends paid by a company which is a resident of one of the Contracting States shall be treated as income from sources within that Contracting State.

(2) 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 that Contracting State, except that interest (other than that paid on indebtedness in connection with the purchase of ships or aircraft which is paid

(*a*) by an enterprise of one of the Contracting States with a permanent establishment outside both Contracting States to a resident of the other Contracting State, or

(*b*) 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.

(3) 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.

(4) Sums derived from the alienation of rights or properties referred to in paragraph (3) of Article VIII shall be treated as arising from sources within the Contracting State in which such rights or properties are used.

(5) Gains, profits and income derived from the alienation of movable property shall be treated as derived from sources within the Contracting State in which such property is alienated.

(6) Income from immovable property (including gains derived from the alienation of such property) and royalties in respect of the operation of mines, oil wells, quarries or other places of extraction of natural resources shall be treated as derived from sources within the Contracting State in which such immovable property, mines, oil wells, quarries or other places of extraction of natural resources are situated.

ARTICLE XVIII

(1) The laws of the Federation and the United Kingdom shall continue to govern the taxation of income arising in either State except where express provision to the contrary is made in the present Agreement. 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) Subject to the provisions of the laws of the Federation regarding the allowance as a credit against Federation tax of tax payable in any country other than the Federation, 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 Federation tax payable in respect of that income. Where such income is an ordinary dividend paid by a company which is a resident of the United Kingdom, the credit shall take into account (in addition

to any United Kingdom income tax appropriate to the dividend) the United Kingdom profits tax payable in respect of its profits by the company paying the dividend; 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 United Kingdom profits tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(3) Subject to the provisions of the laws of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom, Federation tax payable, whether directly or by deduction, in respect of income from sources within the Federation 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 which is a resident of the Federation, the credit shall take into account (in addition to any Federation tax appropriate to the dividend) the Federation 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 Federation tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(4) For the purposes of paragraph (3) of this Article, the term " Federation tax payable " shall be deemed to include:

(*a*) any amount which would have been payable as Federation tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

(i) Sections 19 and 20 of the Pioneer Industries (Relief from Income Tax) Ordinance, 1958, of the Federation so far as they were in force on, and have not been modified since, the date of the signature of the present Agreement, or have been modified only in minor respects so as not to affect their general character; or

(ii) any other provision which may subsequently be made granting an exemption which is agreed by the taxation authorities of the Contracting Governments 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; or

(*b*) in the case of any pioneer industrial royalties, an amount not exceeding a sum equivalent to tax at a rate of 20 per cent. in respect of Federation tax which would have been payable but for the exemption granted under the provisions of Article VIII. For the purposes of this sub-paragraph the term " pioneer industrial royalties " means royalties as defined in paragraph (2) of Article VIII if and so long as they are payable by a pioneer company for the purposes of its pioneer enterprise during its tax relief period, and the terms " pioneer company ", " pioneer enterprise " and " tax relief period " have the meanings which they respectively have under the Pioneer Industries (Relief from Income Tax) Ordinance, 1958, of the Federation.

(5) For the purposes of paragraphs (2) and (3) of this Article, remuneration or profits for personal (including professional) services shall be treated as derived from sources within the Contracting State in which are rendered the services for which such remuneration or profits are paid, and the services performed in ships or aircraft operated by an enterprise of one of the Contracting States shall be deemed to be rendered in that Contracting State, unless the ships or aircraft are operated wholly or mainly between places within the other Contracting State.

ARTICLE XIX

The taxation authorities of the Contracting States shall exchange such information (being information which is available under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Agreement 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 present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons, including a court, concerned with the assessment and collection of those taxes or the determination of appeals in relation thereto. No information shall be exchanged which would disclose any trade secret or trade process.

ARTICLE XX

(1) Residents 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 residents 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 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) Nothing in this Article shall be construed as obliging the Government of either Contracting State to grant to persons not resident in its territory, any personal allowances, reliefs and reductions for tax purposes which are, by law, available only to persons who are so resident.

(5) In this Article the term "taxation" means taxes of every kind and description.

ARTICLE XXI

(1) Where a taxpayer shows to the satisfaction of the taxation authorities of the Contracting State of which the taxpayer is a resident 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 Agreement, such 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 Agreement and for resolving any difficulty or doubt as to the application or interpretation of the present Agreement.

ARTICLE XXII

(1) The present Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations the Federation or the United Kingdom is responsible and which imposes taxes substantially similar in character to those which are the subject of the present Agreement, 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 Governments in Notes to be exchanged for this purpose.

(2) The termination in respect of the Federation or the United Kingdom of the present Agreement under Article XXIV shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the present Agreement to any territory to which the present Agreement has been extended under this Article.

ARTICLE XXIII

(1) The present Agreement shall come into force on the date when the last of all such things shall have been done in the Federation and the United Kingdom as are necessary to give the Agreement the force of law in the Federation and the United Kingdom respectively, and shall thereupon have effect—

(*a*) in the Federation:
as respects income tax, for any tax year beginning on or after 1st January, 1962;

(*b*) in the United Kingdom:

(i) as respects income tax, for any year of assessment beginning on or after 6th April, 1962;

(ii) as respects surtax, for any year of assessment beginning on or after 6th April, 1961; and

(iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January, 1962, and for the unexpired portion of any chargeable accounting period current at that date.

(2) The Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was made in 1949 between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Malaya shall terminate and cease to be effective as respects taxes to which the present Agreement in accordance with paragraph (1) of this Article applies:

Provided that in a case where any provision of the said Arrangement would have afforded greater relief from tax than any corresponding provision of the present Agreement, the first-mentioned provision shall nevertheless continue to have effect—

(*a*) in the Federation:
as respects income tax, for any tax year ending before 1st January, 1964;

(*b*) in the United Kingdom:

(i) as respects income tax, for any year of assessment ending before 6th April, 1964;

(ii) as respects surtax, for any year of assessment ending before 6th April, 1963; and

(iii) as respects profits tax, for any chargeable accounting period ending before 1st January, 1964, and for the expired portion of any chargeable accounting period current at that date.

ARTICLE XXIV

(1) The present Agreement shall continue in effect indefinitely, but either of the Contracting Governments may, on or before 30th June in any calendar year not earlier than the year 1967, give to the other Contracting Government written notice of termination and, in such event, the present Agreement shall cease to be effective—

(*a*) in the Federation:

as respects income tax, for any tax year beginning on or after 1st January in the calendar year next following that in which such notice is given;

(*b*) in the United Kingdom:

(i) 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;

(ii) 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

(iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January in the calendar year next following that in which the notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Agreement shall not have the effect of reviving any agreement or arrangement abrogated by the present Agreement.

IN WITNESS whereof the undersigned, duly authorised thereto, have signed the present Agreement.

Done in duplicate at Kuala Lumpur the 30th day of August, One thousand nine hundred and sixty-three.

For the Government of the Federation of Malaya
TAN SIEW SIN

For the Government of the United Kingdom
GEOFROY TORY

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Agreement with Malaysia scheduled to this Order replaces the Arrangements made in 1949 and 1950 with the Federation of Malaya(a), with Sabah(b) and with Sarawak(c), as regards United Kingdom income tax, from 6th April 1962. The Agreement deems an earlier Agreement signed on 30th August 1963, by the United Kingdom and the Federation of Malaya, to have had effect, subject to certain amendments, from 16th September 1963 (Malaysia Day) in relation to the territories which have been comprised in Malaysia since 9th August 1965. This earlier Agreement, which appears as the Annex to the present Agreement was never brought into force.

As in the earlier Arrangements, shipping and air transport profits, certain trading profits not arising through a permanent establishment, dividends, royalties, pensions (other than Government pensions), purchased annuities and earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries are to be taxed in general by the paying government only. Remuneration of visiting professors and teachers and payments made for the maintenance of visiting students are (subject to certain conditions) to be exempt in the country visited.

There are a number of new or substantially different provisions. A resident of either country who does not carry on business in the other country through a permanent establishment is to be exempt from tax there on capital gains. Residents of Malaysia are to be entitled to the same personal allowances and reliefs for United Kingdom tax purposes as British subjects not resident in the United Kingdom and residents of the United Kingdom are to be entitled to the same personal allowances and reliefs for Malaysian tax purposes as Malaysian citizens not resident in Malaysia. Where income continues to be taxable in both countries credit is still to be given by the country of the taxpayer's residence for the tax payable in the country of origin of the income, but in the case of dividends paid after 5th April 1966 credit for the tax on the profits out of which the dividends were paid is to be given only where the recipient of the dividend is a company which holds not less than 10 per cent of the voting power in the paying company.

(a) S.I. 1949/363 (1949 I, p. 2269). (b) S.I. 1950/752 (1950 I, p. 1055).
(c) S.I. 1950/1979 (1950 I, p. 1061).

There is a provision designed to prevent the frustration of certain tax reliefs granted in Malaysia in order to encourage development there. Under this provision, credit against United Kingdom tax is to be given to a United Kingdom resident for tax which would have been chargeable in Malaysia but for the Pioneer Industries (Relief from Income Tax) Ordinance 1958 of the Federation or any later provision granting an exemption of substantially similar character. (Under the legislation cited certain new industrial undertakings are exempt from income tax on their profits and the dividends paid out of them for periods of up to five years.) Credit is also to be given up to a rate not exceeding 20 per cent for Malaysian tax which would have been chargeable but for Article VIII on patent, etc., royalties paid for the purpose of a pioneer undertaking during its tax holiday period.

In addition to a provision for exchange of information between the tax authorities of the two countries, which is similar to that in the earlier Arrangements, the Agreement includes provisions for consultation between those authorities to implement the provisions of the Agreement. There is also a new provision safeguarding residents and enterprises of one country against discriminatory taxation in the other country.

The Agreement is to take effect in the United Kingdom for corporation tax and capital gains tax for all years, and for income tax and surtax from the date on which the old Arrangements ceased to have effect.