STATUTORY INSTRUMENTS

1967 No. 25

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Federal Republic of Germany) Order 1967

Laid before the House of Commons in draft

Made - - - - 11th January 1967

At the Court at Sandringham, the 11th day of January 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 subsection (6) of section 347 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 347 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) (Federal Republic of Germany) Order 1967.

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 the Federal Republic of Germany 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 the Federal Republic of Germany ; 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 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION.

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany;

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion;

Have agreed as follows:—

ARTICLE I

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

(*a*) in the Federal Republic of Germany:

the Einkommensteuer (income tax),

the Körperschaftsteuer (corporation tax),

the Vermögensteuer (capital tax), and

the Gewerbesteuer (trade tax)

(hereinafter referred to as "Federal Republic tax"),

(*b*) in the United Kingdom of Great Britain and Northern Ireland:

income tax (including surtax), and

profits tax

(hereinafter referred to as "United Kingdom tax").

(2) This Convention shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the existing taxes.

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 "the Federal Republic" means the territory in which the Basic Law for the Federal Republic of Germany is in force;

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

(*d*) the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives, in the case of the Federal Republic, the Federal Minister of Finance, and, in the case of any territory to which the present Convention is extended under Article XXI, the competent authority for the administration in such territory of the taxes to which the present Convention applies;

(*e*) the term "tax" means United Kingdom tax or Federal Republic tax, as the context requires;

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

(*g*) the term "company" means any body corporate and any entity which is treated as a body corporate for tax purposes;

(*h*) (i) the terms "resident of the United Kingdom" and "resident of the Federal Republic" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and any person who is resident in the Federal Republic (subject to unlimited tax liability) for the purposes of Federal Republic tax; but

(ii) where by reason of the provisions of sub-paragraph (*h*) (i) above an individual is a resident of both territories, then this case shall be solved in accordance with the following rules:

(*aa*) he shall be deemed to be a resident of the territory in which he has a permanent home available to him. If he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);

(*bb*) if the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

(*cc*) if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of the Contracting State of which he is a national;

(*dd*) if he is a national of both Contracting States or of neither of them, the taxation authorities of the Contracting States shall determine the question by mutual agreement;

(iii) where by reason of the provisions of sub-paragraph (*h*) (i) above a legal person is a resident of both territories, then it shall be deemed to be a resident of the territory in which its place of effective management is situated. The same provision shall apply to partnerships and associations which under the national laws by which they are governed are not legal persons;

(*i*) 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 the Federal Republic, as the context requires;

(*j*) the terms "United Kingdom enterprise" and "Federal Republic 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 the Federal Republic, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Federal Republic enterprise, as the context requires;

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

(*l*) (i) 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, quarry or other place of extraction of natural resources;

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

(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) a person acting in a territory on behalf of an enterprise of the other territory—other than an agent of an independent status to whom sub-paragraph (*l*) (v) below applies—shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that territory, 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 ;

(v) 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 in that other territory through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business ;

(vi) the fact that a company which is a resident of one of the territories controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other ;

(*m*) the term " international traffic " includes traffic between places in any territory in the course of a voyage which extends over two or more territories.

(2) Where the present Convention provides (with or without other conditions) that income from a source in one of the territories shall be exempt from tax in that territory if 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 this Convention in the first-mentioned territory shall apply only to so much of the income as is remitted to or received in the other territory.

(3) In the application of the provisions of the present Convention by one of the Contracting Parties any term not otherwise defined in the present Convention 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 present Convention.

ARTICLE III

(1) The industrial or commercial profits of an enterprise of one of the territories shall be subjected to tax only in that territory unless the enterprise carries on a trade or business in the other territory through a permanent establishment situated therein. If it carries on a trade or business in that other territory through a permanent establishment situated therein, tax may be imposed on those profits in the other territory but only on so much of them as is attributable to that permanent establishment.

(2) The share of the industrial or commercial profits of an undertaking accruing to a partner therein who is a resident of one of the territories shall likewise be subjected to tax only in that territory unless the undertaking carries on a trade or business in the other territory through a permanent establishment situated therein. If it carries on a trade or business in that other territory through a permanent establishment situated therein tax may be imposed in the other territory on the share of the profits accruing to that partner, but only on so much as represents his share of the profits attributable to the 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) 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.

(5) Paragraphs (1) and (2) of this Article shall not be construed as preventing one of the Contracting Parties from imposing pursuant to this Convention tax on dividends or income from immovable property derived from sources within its territory by a resident of the other territory even if such dividends or income are not attributable to a permanent establishment in the first-mentioned territory.

(6) Paragraphs (1) and (2) of this Article shall likewise apply in respect of the Gewerbesteuer (trade tax) computed on a basis other than industrial or commercial profits.

ARTICLE IV

Where

(*a*) the person carrying on 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 person participates 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) Profits from the operation of ships or aircraft in international traffic shall be subjected to tax only in the territory in which the place of effective management of the enterprise is situated.

(2) Paragraph (1) of this Article shall likewise apply in respect of the Gewerbesteuer (trade tax) computed on a basis other than profits.

ARTICLE VI

(1) Dividends paid by a company resident in one of the territories to a resident of the other territory may also be taxed in the former territory. Tax shall not, however, be charged in the Federal Republic at a rate in excess of 15 per cent on dividends paid by a company resident in the Federal Republic to a resident of the United Kingdom who is subject to United Kingdom tax thereon. Dividends paid by a company resident in the United Kingdom to a resident of the Federal Republic who is subject to Federal Republic tax thereon shall be exempted from United Kingdom surtax.

(2) Notwithstanding the provisions of paragraph (1) of this Article Federal Republic tax on dividends paid to a company resident in the United Kingdom by a company resident in the Federal Republic at least 25 per cent of the voting shares of which are owned directly or indirectly by the former company may be charged at a rate exceeding 15 per cent but not exceeding 25 per cent if the rate of Federal Republic corporation tax on distributed profits is lower than that on undistributed profits, and the difference between those two rates

is 28 per cent or more; where the difference between the two rates is 20 per cent or more but less than 28 per cent Federal Republic tax on such dividends may be charged at a rate exceeding 15 per cent but not exceeding 20 per cent.

(3) 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 profits represent, in whole or in part, profits or income so derived.

(4) In this Article the term "dividends" includes income arising from participation in the capital and profits of a company resident in the Federal Republic, and the income derived by a sleeping partner from his participation as such.

(5) Paragraphs (1) and (2) of this Article shall not apply where a resident of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein, and such dividends are attributable to that permanent establishment; in such event the dividends may be subjected to tax in the territory where the permanent establishment is situated.

(6) The provisions of paragraphs (1) and (2) of this Article shall not prevent Federal Republic tax from being deducted at source at the rates which would apply if this Article were not in force. Where the amount of tax so deducted exceeds the amount of tax chargeable under the provisions of this Article, the excess amount of tax shall be refunded upon application to be made by the recipient of the dividends to the tax office concerned. The refund shall be made if it is applied for within a period of three years from the day on which the dividends have been received.

ARTICLE VII

(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, shall be subjected to tax only in that other territory.

(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 of literary, artistic or scientific work, patent, design, model, plan, 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 or a rent or royalty paid in respect of cinematograph films. There shall be treated as royalties all rents and similar payments received as consideration for the use of, or the privilege of using, industrial, commercial or scientific equipment, and for the supply of information concerning industrial, commercial or scientific experience.

(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 provisions of this Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.

(4) Any payment received as consideration for the alienation of any property or rights mentioned in paragraph (2) of this Article, 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, shall be subjected to tax only in that other territory.

(5) Paragraphs (1) and (4) of this Article shall not apply where a resident of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein and such interest, royalty or other payment is attributable to that permanent establishment; in such event the interest, royalty or other payment may be subjected to tax in the territory where the permanent establishment is situated.

ARTICLE VIII

(1) Gains from the sale, transfer or exchange of capital assets derived from sources within one of the territories by a resident of the other territory shall be subjected to tax only in that other territory.

(2) For the purposes of the foregoing paragraph the term "capital assets" shall not be deemed to include immovable property or a share in a partnership.

(3) Paragraph (1) of this Article shall not apply where a resident of one of the territories carries on a trade or business in the other territory through a permanent establishment situated therein and such gains are attributable to that permanent establishment; in such event the gains may be subjected to tax in the territory where the permanent establishment is situated.

ARTICLE IX

(1) Remuneration, including pensions, paid, in respect of present or past services or work, out of public funds of the United Kingdom or Northern Ireland or the funds of any local authority in the United Kingdom shall be exempt from Federal Republic tax unless the payment is made to a German national who is not also a national of the United Kingdom.

(2) Remuneration, including pensions, paid, in respect of present or past services or work, out of public funds of the Federal Republic or its Länder or political sub-divisions thereof shall be exempt from United Kingdom tax unless the payment is made to a national of the United Kingdom who is not also a German national.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to payments in respect of services rendered or work done in connection with any trade or business carried on for purposes of profit.

ARTICLE X

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

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

(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 XI

(1) Income derived by a resident of one of the territories in respect of professional services or other independent activities of a similar character shall be subjected to tax only in that territory unless he has a fixed base regularly available to him in the other territory for the purpose of performing his activities. If he has such a fixed base, such part of that income as is attributable to that base may be taxed in that other territory.

(2) Subject to the provisions of Articles IX, X and XIII salaries, wages and other similar remuneration derived by a resident of one of the territories in respect of an employment shall be subjected to tax only in that territory unless the employment is exercised in the other territory. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other territory.

(3) Notwithstanding the provisions of paragraph (2) of this Article, remuneration derived by a resident of one of the territories in respect of an employment exercised in the other territory shall be subjected to tax only in the first-mentioned territory if:

(*a*) the recipient is present in the other territory for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and

(*b*) the remuneration is paid by or on behalf of an employer who is not a resident of the other territory, and

(*c*) the remuneration is not deducted from the profits of a permanent establishment or a fixed base which the employer has in the other territory.

(4) Director's fees and similar payments derived by a resident of one of the territories in his capacity as a member of the board of directors of a company resident in the other territory may be taxed in that other territory.

(5) Notwithstanding the provisions of paragraphs (2) and (3) of this Article remuneration for personal services performed aboard a ship or aircraft in international traffic may be taxed in the territory in which the place of effective management of the enterprise is situated.

(6) Notwithstanding anything contained in this Convention, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians and by athletes, from their personal activities as such, may be taxed in the territory in which these activities are exercised.

ARTICLE XII

(1) Income from immovable property may be taxed in the territory in which such property is situated.

(2) The term " immovable property " shall be defined in accordance with the laws of the territory in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment of agricultural and forestry enterprises, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of mineral deposits, sources and other natural resources ; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) of this Article shall apply to income derived from the direct use or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises. They shall likewise apply to profits from the alienation of immovable property.

(4) The provisions of paragraphs (1) to (3) of this Article shall also apply to the income from immovable property of any enterprises other than agricultural or forestry enterprises and to income from immovable property used for the performance of professional services.

ARTICLE XIII

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 XIV

A student or business apprentice (including in the Federal Republic a Volontär or a Praktikant) 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 outside that other territory for the purposes of his maintenance, education or training.

ARTICLE XV

Any income not dealt with in the foregoing provisions derived by a resident of one of the territories who is subject to tax in that territory in respect thereof shall be subjected to tax only in that territory.

ARTICLE XVI

(1) Capital represented by immovable property as defined in paragraph (2) of Article XII may be taxed in the territory in which such property is situated.

(2) Subject to the provisions of paragraph (1) of this Article, capital represented by assets forming part of the business property employed in a permanent establishment of an enterprise, or by assets pertaining to a fixed base used for the performance of professional services, may be taxed in the territory in which the permanent establishment or fixed base is situated.

(3) Ships and aircraft operated in international traffic and assets, other than immovable property, pertaining to the operation of such ships and aircraft may be subjected to tax only in the territory in which the place of effective management of the enterprise is situated.

(4) All other elements of capital of a resident of one of the territories may be subjected to tax only in that territory.

ARTICLE XVII

(1) Individuals who are residents of the Federal Republic 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 Federal Republic income tax as German nationals not resident in the Federal Republic.

ARTICLE XVIII

(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 this Convention. Where income is subject to tax in both territories (for example, where a person is a resident of one of the territories and, in cases within the scope of Articles III, VI, XI or XII, has income from sources in the other territory) relief from double taxation shall be given in accordance with the following paragraphs.

(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, Federal Republic tax payable under the laws of the Federal Republic and in accordance with this Convention, whether directly or by deduction, in respect of income from sources within the Federal Republic 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 the Federal Republic the credit shall take into account (in addition to any Federal Republic tax payable in respect of the dividend) the Federal Republic 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 Federal Republic tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate. For the purpose of this paragraph the term "Federal Republic tax" shall not include Gewerbesteuer (trade tax) computed on a basis other than profits or Vermögensteuer (capital tax).

(3) Tax shall be determined in the case of a resident of the Federal Republic as follows:

(*a*) Unless the provisions of sub-paragraph (*b*) below apply, there shall be excluded from the basis upon which Federal Republic tax is imposed any item of income from sources within the United Kingdom and any item of

capital situated within the United Kingdom which, according to this Convention, may be taxed in the United Kingdom. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. The first sentence of this sub-paragraph shall in the case of income from dividends apply only to such dividends as are paid to a company limited by shares (Kapitalgesellschaft) being a resident of the Federal Republic by a company limited by shares being a resident of the United Kingdom at least 25 per cent of the voting shares of which are owned by the first-mentioned company. There shall also be excluded from the basis upon which Federal Republic tax is imposed any participation the dividends on which are excluded, or if paid would be excluded, from the tax basis according to the foregoing sentence.

(*b*) There shall be allowed as a credit against Federal Republic tax payable in respect of the following items of income from sources within the United Kingdom

(i) in respect of dividends not dealt with in sub-paragraph (*a*) above, an amount of 18 per cent of the net amount of the dividends received ;

(ii) the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention on remuneration and pensions within the meaning of Article IX paid out of any fund established in the United Kingdom to an individual who is a German national without being also a national of the United Kingdom.

(4) For the purposes of this Article:

(*a*) profits or remuneration arising from the exercise of a profession or employment in one of the territories shall be deemed to be income from sources within that territory ;

(*b*) 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 ; and

(*c*) any remuneration or pension within the meaning of paragraph (1) or (2) of Article IX shall be deemed, notwithstanding the foregoing provisions of this paragraph, to be income from a source within the territory of the Contracting Party in whose territory the fund is established out of which the remuneration or pension is paid.

Article XIX

(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 present 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 present Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

(2) The taxation authorities of the Contracting Parties shall consult each other at the earliest time possible in cases where this is necessary for the interpretation of the present Convention or the implementation of its provisions, in particular those contained in Articles III and IV.

Article XX

(1) The nationals of one of the Contracting States shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The term " nationals " means

(*a*) in relation to the Federal Republic, all Germans within the meaning of Article 116(1) of the Basic Law for the Federal Republic of Germany, and all legal persons, partnerships and associations deriving their status as such from the law in force in the Federal Republic ;

(*b*) in relation to the United Kingdom, all British subjects and British protected persons

(i) residing in the United Kingdom or any territory to which the present Convention is extended under Article XXI or

(ii) deriving their status as such from connexion with the United Kingdom or any territory to which the present Convention is extended under Article XXI,

and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom or in any territory to which the Convention is extended under Article XXI.

(3) The taxation on a permanent establishment which an enterprise of one of the territories has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. This provision shall not be construed as obliging one Contracting State to grant to residents of the territory of the other Contracting State any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

(4) Enterprises of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other territory, shall not be subjected in the first-mentioned territory 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 that first-mentioned territory are or may be subjected.

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

ARTICLE XXI

(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 present 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 the Federal Republic or the United Kingdom of the present Convention under Article XXIV shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

ARTICLE XXII

(1) This Convention shall also apply to Land Berlin provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the United Kingdom of Great Britain and Northern Ireland within three months from the date of entry into force of this Convention.

(2) Upon the application of this Convention to Berlin, references in the Convention to the Federal Republic shall be deemed also to be references to Land Berlin.

ARTICLE XXIII

(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 after the expiration of a month following the date on which the instruments of ratification are exchanged(a).

(a) Instruments of ratification were exchanged on 30th December 1966.

(3) Upon the entry into force of the present Convention in accordance with paragraphs (1) and (2) of this Article the foregoing provisions of the Convention shall have effect, and the provisions of the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed in London on the 18th August, 1954(a), shall cease to have effect—

(*a*) In the United Kingdom:

(i) as respects income tax for any year of assessment beginning on or after the 6th April, 1960;

(ii) as respects surtax for any year of assessment beginning on or after the 6th April, 1959; and

(iii) as respects profits tax in respect of the following profits:—

(*aa*) profits arising in any chargeable accounting period beginning on or after the 1st April, 1960;

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

(*cc*) 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 the 6th April, 1960;

(*b*) in the Federal Republic:

(i) in respect of the Federal Republic tax withheld from dividends for the tax from dividends paid after the day of the entry into force of the present Convention;

(ii) for the other Federal Republic taxes, which are levied for the assessment period 1960 and for subsequent periods.

(4) Provided that in a case where any provision of the said Convention of the 18th August, 1954(a), would have afforded any income or capital greater relief from United Kingdom tax or from any tax levied in the Federal Republic than would any corresponding provision of the present Convention, the provisions of the said Convention of the 18th August, 1954(a), shall continue to have effect, and the present Convention shall not be effective, in respect of the taxation of such income or capital:

(*a*) In the United Kingdom:

(i) as respects income tax for any year of assessment ending before 6th April of the calendar year in which the exchange of the instruments of ratification takes place;

(ii) as respects surtax for any year of assessment ending before 6th April of the calendar year preceding that in which the exchange of the instruments of ratification takes place;

(iii) as respects profits tax for any chargeable accounting period ending before 1st January of the calendar year in which the exchange of the instruments of ratification takes place, and for the expired portion of any chargeable accounting period current at the date.

(*b*) In the Federal Republic:

as respects Federal Republic taxes for any taxes levied for any assessment period preceding that in which the exchange of the instruments of ratification takes place. This shall not apply to taxes mentioned in Article XXIII paragraph (3) sub-paragraph (*b*)(i).

ARTICLE XXIV

The present Convention shall continue in force indefinitely but either of the Contracting Parties may, on or before the 30th June in any calendar year

(a) S.I. 1955/1203 (1955 I, p. 972).

not earlier than the year 1968, give to the other Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective:

(*a*) In the United Kingdom:

(i) as respects income tax for any year of assessment beginning on or after the 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 the 6th April in the calendar year in which the notice is given; and

(iii) as respects profits tax in respect of the following profits:—

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

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

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

(*b*) In the Federal Republic:

for any period of assessment following the year in which notice of termination is given.

In witness whereof the undersigned, duly authorised thereto, have signed the present Convention.

Done in duplicate at Bonn the 26th day of November, 1964, in the English and German languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

FRANK K. ROBERTS.

For the Federal Republic of Germany:

CARSTENS.
FALK.

EXPLANATORY NOTE

(*This Note is not part of the Order.*)

The Convention with the Federal Republic of Germany scheduled to this Order, which is to replace the Convention signed in London on 18th August, 1954, is, in general, similar to the existing Convention.

The new Convention provides, however, that the maximum rate of German tax which may be charged on dividends paid by certain German subsidiary companies to their United Kingdom parent companies is to be 25 per cent; and there are changes in the reliefs granted by Germany where a German resident receives dividends from a United Kingdom company.

In the new Convention the opportunity has also been taken to include certain Articles in a modified form so as to bring them into line with Articles which the Council of the Organisation for European Co-operation and Development has recommended Member Countries to adopt when revising existing conventions.

The new Convention is to take effect for the fiscal year 1960–61, with a saving for an interim period for persons entitled to greater relief under the existing Convention.

(21/34513) (A.31) K40 1/67 St.S.

STATUTORY INSTRUMENTS

1967 No. 25

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Federal Republic of Germany) Order 1967

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