1967 No. 26

INCOME TAX

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

Laid before the House of Commons in draft

Made - - - - - 11*th 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, as amended by section 39 and section 64 of the Finance Act 1965(b) and section 33 of the Finance Act 1966(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) (Switzerland) Order 1967.

2. It is hereby declared—

(*a*) that the arrangements specified in the Protocol set out in the Schedule to this Order have been made with the Swiss Federal Council with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Switzerland varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1955(d); and

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

W. G. Agnew.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10.
(b) 1965 c. 25.
(c) 1966 c. 18.
(d) S.I. 1955/422 (1955 I, p. 1001).

SCHEDULE

PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION, AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON THE 30th SEPTEMBER, 1954

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council;

Desiring to conclude a Protocol amending the Convention between the Contracting Parties for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on the 30th September, 1954, (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

Article I of the Convention shall be deleted and replaced by the following:

"ARTICLE I

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

(*a*) In the case of the United Kingdom of Great Britain and Northern Ireland:

The income tax (including surtax), the corporation tax, and the capital gains tax (hereinafter referred to as "United Kingdom tax");

(*b*) In the case of Switzerland:

The federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income), but not including the Federal coupon tax except where expressly mentioned (hereinafter referred to as "Swiss tax").

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Switzerland subsequently to the date of signature of the present Convention or by the government of any territory to which the present Convention is extended under Article XXI."

ARTICLE 2

Paragraph (2) of Article II of the Convention shall be deleted and replaced by the following:

"ARTICLE II

(2) Where under any provision of the present Convention income from a source within Switzerland is relieved from Swiss tax and, under the law in force in the United Kingdom, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under the Convention in Switzerland shall apply only to so much of the income as is remitted to or received in the United Kingdom."

ARTICLE 3

Article VI of the Convention shall be deleted and replaced by the following:

"ARTICLE VI

(1) The rate of Swiss tax on dividends beneficially owned by a resident of the United Kingdom which are derived by such a resident from a company which is a resident of Switzerland shall not exceed:

(*a*) 5 per cent of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 15 per cent of the gross amount of the dividends.

For the purpose of this paragraph the term "Swiss tax" shall include Federal coupon tax.

(2) The rate of United Kingdom tax on dividends beneficially owned by a resident of Switzerland which are derived by such a resident from a company which is a resident of the United Kingdom shall not exceed:

(*a*) 5 per cent of the gross amount of the dividends if the recipient is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 15 per cent of the gross amount of the dividends.

(3) In this Article the term "dividends" means income from shares, *jouissance* shares or *jouissance* rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the territory of which the company making the distribution is a resident and, in the case of the United Kingdom, includes any item (other than interest or royalties exempt from United Kingdom tax under Article VII or Article VII A of this Convention) which under the law of the United Kingdom is treated as a distribution of a company.

(4) If the beneficial owner of a dividend is not subject to tax in respect thereof in the territory of which it is a resident and 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) of this Article 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.

(5) The provisions of paragraphs (1) and (2) of this Article shall not apply if the recipient of the dividends, being a resident of one of the territories, has in the other territory a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade or business carried on through such permanent establishment.

(6) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be

imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived."

ARTICLE 4

Article VII of the Convention shall be deleted and replaced by the following:

"ARTICLE VII

(1) Interest derived and beneficially owned by a resident of one of the territories shall be exempt from tax in the other territory.

(2) In this Article the term "interest" means interest on bonds, securities, notes, debentures or on any other form of indebtedness (including mortgages or bonds secured on real property).

(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the interest, being a resident of one of the territories, has in the other territory a permanent establishment and the indebtedness giving rise to the interest is effectively connected with a trade or business carried on through such permanent establishment.

(4) Interest exempted from tax under the provisions of this Article shall not be treated as a distribution of a company paying such interest by reason of any provisions in the law of either territory which relate only to interest paid to a non-resident, with or without any further requirement, or which relate only to interest payments between interconnected companies, with or without any further requirement.

(5) The provisions of paragraph (4) of this Article shall not apply to interest paid to a company which is a resident of one of the territories where:

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

(*b*) more than 50 per cent of the voting power in the company receiving the interest is controlled, directly or indirectly, by a person or persons resident in the other territory.

(6) The provisions of paragraph (1) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

(*a*) is not subject to tax in respect thereof in the territory of which it is a resident, and

(*b*) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(7) 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 interest paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments, if treated as a dividend or distribution of a company, shall be taxed in accordance with Article VI."

ARTICLE 5

The following new Article shall be inserted immediately after Article VII of the Convention:

"ARTICLE VII A

(1) Royalties derived and beneficially owned by a resident of one of the territories shall be exempt from tax in the other territory.

(2) In this Article the term "royalties"

(*a*) means any royalties, rentals or other amounts paid as consideration for the use of, or the right to use, copyrights of literary, artistic or scientific works, patents, designs or models, plans, secret processes or formulae, trade-marks or other like property or rights, or for industrial, commercial or scientific equipment, or for knowledge, experience or skill (know-how), and

(*b*) includes gains derived from the sale or exchange of any right or property giving rise to such royalties, but

(*c*) does not include royalties or other amounts paid in respect of the operation of mines or quarries or of the extraction or removal of natural resources.

(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the royalties, being a resident of one of the territories, has in the other territory a permanent establishment and the right or property giving rise to the royalties is effectively connected with a trade or business carried on through such permanent establishment.

(4) Royalties exempted from tax under the provisions of this Article shall not be treated as a distribution of a company paying such royalties, whatever the relationship between that company and the person receiving the royalties may be.

(5) The provisions of paragraph (4) of this Article shall not apply to royalties paid to a company which is a resident of one of the territories 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 other territory.

(6) 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 paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments, if treated as a dividend or distribution of a company, shall be taxed in accordance with Article VI."

ARTICLE 6

Article XIV of the Convention shall be deleted and replaced by the following:

"ARTICLE XIV

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of Switzerland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(2) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swiss tax as Swiss nationals resident in the United Kingdom.

(3) Nothing in this Convention shall entitle an individual who is a resident of one of the territories and whose income from the other territory consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purposes of taxation in that other territory."

ARTICLE 7

Article XV of the Convention shall be deleted and replaced by the following:

"ARTICLE XV

(1) 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 (which shall not affect the general principle hereof):

(*a*) Swiss tax payable under the laws of Switzerland and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Switzerland (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Swiss tax is computed;

(*b*) in the case of a dividend paid by a company which is a resident of Switzerland to a company which is resident in the United Kingdom and which controls directly or indirectly at least 25 per cent of the voting power in the Swiss company, the credit shall take into account (in addition to any Swiss tax creditable under sub paragraph (*a*)) the Swiss tax payable by the company in respect of the profits out of which such dividend is paid.

For the purpose of this paragraph the term "Swiss tax" shall include Federal coupon tax.

(2) Where a resident of Switzerland derives income which, under the laws of the United Kingdom and in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Switzerland shall, subject to the provisions of paragraphs (3) and (4) of this Article, exempt such income from Swiss tax.

(3) Where a resident of Switzerland derives dividends which, in accordance with the provisions of paragraph (2) of Article VI, may be taxed in the

United Kingdom, Switzerland shall allow, upon request, a relief to such person. The relief may consist of:

(*a*) a deduction from the Swiss tax on the income of that person of an amount equal to the tax levied in the United Kingdom in accordance with the provisions of paragraph (2) of Article VI; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the dividends, or

(*b*) a lump sum reduction of the Swiss tax determined by standardised formulae which have regard to the general principles of the relief referred to in subparagraph (*a*) above, or

(*c*) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in the United Kingdom from the gross amount of the dividends.

Switzerland shall determine the applicable relief and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

(4) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of the United Kingdom shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

(5) In the case of a person (other than a company or partnership) who is resident in the United Kingdom for the purposes of United Kingdom tax and is also resident (by reason of domicile or sojourn) in Switzerland for the purposes of Swiss tax, the provisions of paragraph (1) of this Article shall apply in relation to income which that person derives from sources within Switzerland, and the provisions of paragraph (2) of this Article shall apply in relation to income (including dividends) which that person derives from sources within the United Kingdom. If such person derives income from sources outside both the United Kingdom and Switzerland, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the Contracting Parties and the territory from which the income is derived) but the Swiss tax on so much of that income as is subjected to tax in both the territories shall be limited to one-half of the tax on such income, and the United Kingdom tax on that income shall be reduced by a credit, in accordance with the provisions of paragraph (1) of this Article, for the Swiss tax so computed.

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

ARTICLE 8

Paragraph (4) of Article XVIII of the Convention shall be deleted and replaced by the following:

"ARTICLE XVIII

(4) Nothing contained in this Article shall be construed as obliging one Contracting Party to grant to persons not resident in its territory those personal allowances, reliefs and reductions for tax purposes which are by law available only to persons who are so resident, nor as restricting the deduction of United Kingdom income tax from dividends paid to a permanent establishment in the United Kingdom of a company which is a resident of Switzerland, if such dividends are not subject to United Kingdom corporation tax in the hands of the recipient."

ARTICLE 9

Article XXIV of the Convention shall be deleted and replaced by the following:

"ARTICLE XXIV

The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th June in any calendar year after the year 1967, give to the other Contracting Party, through diplomatic channels, 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 and surtax, for any year of assessment beginning on or after the 6th April in the calendar year next following that in which such notice is given;

(ii) as respects corporation tax, for any financial year beginning on or after the 1st April in the calendar year next following that in which such notice is given; and

(iii) as respects capital gains tax, for any year of assessment beginning on or after the 6th April in the calendar year next following that in which such notice is given;

(*b*) In Switzerland:

for any taxable year beginning on or after the 1st January of the calendar year next following that in which such notice is given."

ARTICLE 10

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

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

(*a*) In the United Kingdom:

(i) as respects income tax and surtax for any year of assessment beginning on or after the 6th April, 1966;

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

(iii) as respects capital gains tax for any year of assessment beginning on or after the 6th April, 1965;

(*b*) In Switzerland:

for any taxable year beginning on or after the 1st January, 1966.

(a) Instruments of ratification were exchanged on 20th December 1966.

(3) Where a company resident in the United Kingdom is required to account for income tax for the year beginning on the 6th April, 1966 on any amount by reference to dividends it paid in the year ending on the 5th April, 1966, Article VI of the Convention shall apply to such part of each gross dividend (other than a preference dividend or a part thereof which is paid at a fixed rate) paid in the year ending on the 5th April, 1966 as corresponds to the proportion which the said amount bears to the total of gross dividends (excluding any preference dividend or part thereof which is paid at a fixed rate) paid by the company in the year ending on the 5th April, 1966.

(4) (*a*) In the United Kingdom:

(i) where any greater relief from income tax would have been afforded by any provision of the Convention signed on the 30th September, 1954, unamended, than is due under the Convention as amended by this Protocol, any such provision as aforesaid shall continue to have effect for any year of assessment beginning before the entry into force of this Protocol;

(ii) any Article in the Convention signed on the 30th September, 1954, which is deleted by this Protocol shall have no effect in relation to corporation tax.

(*b*) In Switzerland:

where any greater relief from anticipatory tax on dividends would have been afforded by any provision of the Convention signed on the 30th September, 1954, unamended, than is due under the Convention as amended by this Protocol, any such provision as aforesaid shall continue to have effect for any calendar year beginning before the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at London this 14th day of June, 1966, in the English and French languages, both texts being equally authoritative.

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

G. THOMSON.

For the Swiss Federal Council:

B. DE FISCHER.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order extends the Convention with Switzerland signed on 30th September 1954 to United Kingdom corporation tax and capital gains tax, and makes certain other alterations to it, the more important of which are as follows.

The rate of tax on dividends flowing from one country to the other is normally not to exceed 15 per cent in the case of portfolio investment and 5 per cent in the case of direct investment. As hitherto, credit for underlying Swiss tax on dividends from a Swiss company will be restricted to dividends received by a United Kingdom parent company from its Swiss subsidiary, but for this purpose the definition of subsidiary is extended by the Protocol to include the case where there is control of at least 25 per cent of the voting power in the Swiss company.

Interest and royalties flowing from one country to the other will (as hitherto) normally be exempt from tax in the country of origin but there is, in the Protocol, no provision requiring these payments to be allowed as a deduction from the profits or income of the person paying them. In certain circumstances interest and royalties which under the general law of one of the countries would be treated as a distribution of the paying company are not to be so treated if the payments are made to a resident of the other country.

Relief from tax on dividends, interest and royalties (other than mining royalties) in the country of origin will no longer depend on the recipient being subject to tax in the other country, but instead will depend on the income being beneficially owned by a resident of the other country. Where such income is taxed in the other country on the basis of the amount remitted there, the relief is to apply only to the amounts so remitted.

The Protocol is, in general, to take effect in the United Kingdom for corporation tax and capital gains tax for all years and for income tax and surtax for the fiscal year 1966–67 and subsequent years.