STATUTORY INSTRUMENTS

1968 No. 1868

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Lesotho) Order 1968

Laid before the House of Commons in draft

Made - - - 22nd November 1968

At the Court at Buckingham Palace, the 22nd day of November 1968

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 64 of the Finance Act 1965(**b**) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Lesotho) Order 1968.

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 the Kingdom of Lesotho with a view to affording relief from double taxation in relation to income tax or corporation tax and taxes of a similar character imposed by the laws of Lesotho varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Basutoland) Order 1949(**c**); 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**) S.I. 1949/2197 (1949 I, p. 2242).

SCHEDULE

AGREEMENT AMENDING THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF LESOTHO 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 Kingdom of Lesotho,

Desiring to amend the Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income in force between Her Majesty's Government and the Government of Basutoland immediately before 4 October 1966, when Basutoland was established as an independent kingdom under the name of Lesotho, and continued in force since that date between the Government of the United Kingdom and the Government of the Kingdom of Lesotho (hereinafter referred to as "the Arrangement"),

Have agreed as follows:

ARTICLE 1

The Arrangement shall be amended—

(*a*) by the substitution for the references therein to "Basutoland", "Basutoland enterprise" and "Basutoland tax" of references to "Lesotho", "Lesotho enterprise" and "Lesotho tax" respectively;

(*b*) by the addition at the end of paragraph 6 of the following new sub-paragraph—

"(3) 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 sub-paragraph (1) shall not 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 sub-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 sub-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 paragraph."; and

(*c*) by the substitution for sub-paragraphs (1) and (2) of paragraph 14 of the following new sub-paragraphs—

"(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*) Lesotho tax payable under the laws of Lesotho and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Lesotho shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Lesotho tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(*b*) Where a company which is a resident of Lesotho pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Lesotho tax for which credit may be allowed under (*a*) of this sub-paragraph) the Lesotho tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) If Lesotho tax is payable, whether directly or by deduction, in respect of income derived from sources within the United Kingdom, then, subject to the provisions of the law of Lesotho regarding the allowance as a credit against Lesotho tax of tax payable in a territory outside Lesotho (which shall not affect the general principle hereof)—

(*a*) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Lesotho tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed. Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable.

(*b*) Where a company which is a resident of the United Kingdom pays a dividend to a company which is resident in Lesotho which controls directly or indirectly at least 10 per cent. of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (*a*) of this sub-paragraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid."

ARTICLE 2

(1) This Agreement shall enter into force when the last of all such things shall have been done in the United Kingdom and Lesotho as are necessary to give the Agreement the force of law in the United Kingdom and Lesotho respectively.

(2) Upon the entry into force of this Agreement in accordance with paragraph (1) the new sub-paragraph (3) of paragraph 6 of the Arrangement and the new sub-paragraphs (1) and (2) of paragraph 14 thereof shall have effect immediately.

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

DONE in duplicate at Maseru this third day of July 1968.

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

M. F. CHAPMAN

For the Government of the Kingdom of Lesotho:

P. N. PEETE

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Agreement makes two amendments to the Arrangement between the United Kingdom and Lesotho which is scheduled to the Double Taxation Relief (Taxes on Income) (Basutoland) Order 1949.

First it provides that the exemption of dividends from any tax chargeable in addition to the tax on the paying company's profits is not to be allowed in certain cases where the shareholder is a company having a substantial holding in the paying company. The restriction does not apply to dividends on shares acquired for *bona fide* commercial reasons.

Secondly, it amends paragraph 14 of the 1949 Arrangement in its application to dividends by providing that credit for tax on the profits out of which dividends are paid, whether that tax is deducted from the dividends or not, is to be given only where the recipient is a company which holds not less than 10 per cent of the voting power in the paying company.

The Agreement applies to dividends paid after the date on which it enters into force.