STATUTORY INSTRUMENTS

1968 No. 306

INCOME TAX

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

Laid before the House of Commons in draft

Made - - - *4th March* 1968

At the Court at Buckingham Palace, the 4th day of March 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) (Brunei) Order 1968.

2. It is hereby declared—

(*a*) that the arrangements specified in the Arrangement set out in the Schedule to this Order have been made with the Government of Brunei 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 Brunei varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Brunei) Order 1950(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. 1950/1977 (1950 I, p. 1004).

SCHEDULE

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF BRUNEI TO AMEND THE EXISTING ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

1. The Arrangement made in 1950 between His Majesty's Government and the Government of Brunei for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as " the existing Arrangement ") shall be amended—

(*a*) 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

(*b*) by the substitution for sub-paragraphs (1) and (2) of paragraph 12 of the following two 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*) Brunei tax payable under the laws of Brunei and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Brunei 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 Brunei 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 Brunei 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 Brunei tax for which credit may be allowed under (*a*) of this sub-paragraph) the Brunei tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) Subject to the provisions of the law of Brunei regarding the allowance as a credit against Brunei tax of tax payable in a territory outside Brunei (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 Brunei 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 resident in Brunei 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."

2. This Arrangement shall enter into force when the last of all such things shall have been done in the United Kingdom and Brunei as are necessary to give the amendments the force of law in the United Kingdom and Brunei respectively, and the new sub-paragraph (3) of paragraph 6 of the existing Arrangement and the new sub-paragraphs (1) and (2) of paragraph 12 thereof shall have effect immediately in the United Kingdom and in Brunei.

EXPLANATORY NOTE

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

This Arrangement makes two amendments to the Arrangement between the United Kingdom and Brunei which is scheduled to the Double Taxation Relief (Taxes on Income) (Brunei) Order, 1950.

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 12 of the 1950 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. So far as United Kingdom tax is concerned this provision comes into effect as soon as the Arrangement has entered into force.