1969 No. 1069

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Jamaica) Order 1969

Laid before the House of Commons in draft

Made - - - - 31*st July* 1969

At the Court at Arundel Park, the 31st day of July 1969

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) (Jamaica) Order 1969.

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 Jamaica 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 Jamaica varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Jamaica) Order 1965(c); and

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

W. G. Agnew.

(a) 1952 c. 10.
(b) 1965 c. 25.
(c) S.I. 1965 /1537 (1965 II, p. 4484).

SCHEDULE

AGREEMENT AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF JAMAICA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 2nd APRIL, 1965

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Jamaica,

Desiring to amend the Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income signed at London on 2nd April, 1965, (hereinafter referred to as "the 1965 Agreement"),

Have agreed as follows:

ARTICLE 1

The 1965 Agreement shall be amended:

(*a*) by the addition at the end of Article VI of the following new 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 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 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.";

(*b*) by the substitution for paragraphs (1) and (3) of Article XVIII of the following new 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*) Jamaican tax payable under the laws of Jamaica and in accordance with this Agreement, whether directly or by deduction, on profits or income from sources within Jamaica 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 Jamaican 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 Jamaica 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 Jamaican tax for which credit may be allowed under sub-paragraph (*a*) of this paragraph) the Jamaican tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(3) Subject to the provisions of the law of Jamaica regarding the allowance as a credit against Jamaican tax of tax payable in a territory outside Jamaica (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 Agreement, whether directly or by deduction, on profits or income from sources within the United Kingdom shall be allowed as a credit against any Jamaican 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 Jamaica 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 sub-paragraph (*a*) of this paragraph) the United Kingdom tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid."; and

(*c*) by the addition after Article XVIII of the following new Article:

"ARTICLE XVIIIA

This Agreement shall not apply to companies entitled to any special tax benefit under the Jamaica International Business Companies (Exemption from Income Tax) Law, 1956 (as in effect on 23rd August, 1956) as supplemented by the Jamaica International Business Companies (Exemption from Income Tax) Regulations, 1964 (as in effect on 14th March, 1964) or any substantially similar law subsequently enacted by Jamaica."

ARTICLE 2

This Agreement shall enter into force when the last of all such things shall have been done in the United Kingdom and Jamaica as are necessary to give the Agreement the force of law in the United Kingdom and Jamaica respectively, and shall thereupon have effect immediately, provided that the new paragraphs (1) and (3) of Article XVIII shall have effect in relation to dividends only in respect of dividends paid on or after 1st January, 1970.

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

DONE in duplicate at Kingston this Ninth day of May 1969.

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

J. D. MURRAY.

For the Government of Jamaica:

E. SEAGA.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Agreement makes three amendments to the Agreement between the United Kingdom and Jamaica which is scheduled to the Double Taxation Relief (Taxes on Income) (Jamaica) Order 1965.

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 Article XVIII of the 1965 Agreement 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.

Thirdly, it provides that the Agreement is not to apply to certain Jamaican companies which enjoy special privileges under Jamaican tax law.

The Agreement is, in general, to take effect from the date on which it enters into force but the new paragraphs (1) and (3) of Article XVIII do not apply to dividends paid before 1st January 1970.