STATUTORY INSTRUMENTS

1970 No. 1949

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Netherlands Antilles) Order 1970

Laid before the House of Commons in draft
Made - - - - 17th December 1970

At the Court at Buckingham Palace, the 17th day of December 1970

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 497(8) of the Income and Corporation Taxes Act 1970(**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 497 of the said Income and Corporation Taxes Act 1970, and section 39 of the Finance Act 1965(**b**), as amended, 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) (Netherlands Antilles) Order 1970.

2. It is hereby declared—

(*a*) that the arrangements specified in the Schedule to this Order for the extension to the Netherlands Antilles of the arrangements specified in the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Netherlands) Order, 1968(**c**), have been made with the Government of the Kingdom of the Netherlands on behalf of the Government of the Netherlands Antilles 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 the Netherlands Antilles ; and

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

W. G. Agnew.

(a) 1970 c. 10. (b) 1965 c. 25. (c) S.I. 1968/577 (1968 I, p. 1326).

SCHEDULE

(1) In the present agreement the " 1967 Convention " means the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed at London on 31st October, 1967.

(2) The provisions of the 1967 Convention shall apply:

(*a*) as if the Contracting Parties were the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Netherlands Antilles ;

(*b*) as if references to the Netherlands were (except where the context otherwise requires) references to the Netherlands Antilles ;

(*c*) as if the taxes referred to in sub-paragraph (*b*) of paragraph (1) of Article 2 were the income tax (*inkomstenbelasting*), the profits tax (*winstbelasting*) and the surtaxes on the income and profits taxes ;

(*d*) as if sub-paragraph (*b*) of paragraph (1) of Article 3 were deleted and replaced by the following:

" (*b*) the term " Netherlands Antilles " means the part of the Kingdom of the Netherlands that is situated in the Caribbean area and consisting of the islands Aruba, Bonaire, Curaçao, Saba, St. Eustatius and St. Martin (Dutch part) and the part of the sea bed and its sub-soil under the Caribbean Sea over which the Kingdom of the Netherlands has sovereign rights in accordance with international law ; " ;

(*e*) as if the term " taxation authorities " meant in the case of the Netherlands Antilles the Minister of Finance (*de Minister van Financiën*) or his authorised representative ;

(*f*) as if paragraph (2) of Article 11 were deleted and replaced by the following:

" (2) However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but where such dividends are beneficially owned by a resident of the other State the tax charged shall not exceed 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid." ;

(*g*) as if paragraph (7) of Article 11 were deleted ;

(*h*) as if sub-paragraph (*b*) of paragraph (1) of Article 26 were deleted ;

(*i*) as if in sub-paragraph (*a*) of paragraph (2) of Article 26 any reference to Netherlands income tax were a reference to Netherlands Antilles income tax and any reference to Netherlands company tax were a reference to Netherlands Antilles profits tax ;

(*j*) as if in sub-paragraph (*b*) of paragraph (2) of Article 26 the reference to Article 11, paragraph (2) were deleted ;

(*k*) as if sub-paragraph (*b*) of paragraph (2) of Article 27 were deleted and replaced by the following:

" (*b*) in relation to the Netherlands Antilles:

(i) all individuals possessing the Netherlands nationality ;

(ii) all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in the Netherlands Antilles." ;

(*l*) as if Article 30 were deleted and replaced by the following:

"ARTICLE 30

Restriction of Relief

Notwithstanding the provisions of Articles 11, 12 and 13 of this Convention nothing in this Convention shall give a title to any relief from United Kingdom tax on any dividend, interest or royalty which enjoys any of the special tax benefits provided under the Netherlands Antilles National Ordinance on Profits Tax of 1940 as in force at 1st November, 1969 (that is to say the benefits provided under Article 13, Article 14 or Article 14A of that Ordinance but not the relief provided under Article 8A of that Ordinance while that relief remains in substantially the form in force at 1st November, 1969), or which enjoys any similar tax benefits granted under any law of the Netherlands Antilles enacted after that date.";

(*m*) as if Article 31 and Article 32 were deleted.

(3) On its entry into force the present agreement shall have effect:

(*a*) in the United Kingdom:

(i) in respect of income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April, 1970;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April, 1970;

(*b*) in the Netherlands Antilles:

in respect of any taxes for taxable years and periods beginning on or after 1st January, 1970.

(4) Each of the Contracting Parties shall notify the other in writing of the completion of the procedures required by its law to give effect to the present agreement in its territories. The present agreement shall enter into force on the date of the later of these notifications and shall remain in force indefinitely unless denounced by one of the Contracting Parties on or before the thirtieth day of June in any calendar year after the year 1970.

(5) In the event of its denunciation the present agreement shall cease to have effect:

(*a*) in the United Kingdom:

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

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

(*b*) in the Netherlands Antilles:

for any taxable year or period beginning after the end of the calendar year in which the notice is given.

EXPLANATORY NOTE

(This Note is not part of the Order.)

By this Order the Double Taxation Convention signed on 31st October 1967 between the United Kingdom and the Netherlands is extended, with some modifications, to the Netherlands Antilles.

The extension, in general, takes effect in the United Kingdom from April 1970. The more important provisions are as follows.

Shipping and air transport profits, certain trading profits not arising through a permanent establishment, interest, royalties, pensions (other than Government pensions) and the earnings of temporary business visitors are

(subject to certain conditions) to be taxed only in the country of the taxpayer's residence. The rate of tax in the source country on dividends flowing from one country to the other is normally not to exceed 15 per cent.

The relief from United Kingdom tax does not apply, however, in the case of dividends, interest or royalties which enjoy any of the special tax benefits available in the Netherlands Antilles to certain holding companies.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. Capital gains are normally to be taxed only in the country of the taxpayer's residence, unless they come from the disposal of the assets of a permanent establishment which the taxpayer has in the other country. There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, and for the exchange of information and consultation between the taxation authorities of the two countries.

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