1970 No. 953

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Botswana) Order 1970

Laid before the House of Commons in draft
Made - - - 26th June 1970

At the Court at Buckingham Palace, the 26th day of June 1970

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parli ment in accordance with the provisions of section 497(8) of the Income an Corporation Taxes Act 1970(**a**), and an Address has been presented to H Majesty by that House praying that an Order may be made in the terms this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon H by section 497 of the said Income and Corporation Taxes Act 1970 ar of all other powers enabling Her in that behalf, is pleased, by and with t 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 Incom (Botswana) Order 1970.

2. It is hereby declared—

(*a*) that the arrangements specified in the Agreement set out in t Schedule to this Order have been made with the Government of t Republic of Botswana with a view to affording relief from dou taxation in relation to income tax or corporation tax and taxes of similar character imposed by the laws of Botswana varying the arran ments set out in the Schedule to the Double Taxation Relief (Taxes Income) (Bechuanaland Protectorate) Order 1949(**b**); and

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

W. G. Agnew.

(a) 1970 c. 10.

(b) S.I. 1949/2198 (1949 I, p. 2249).

SCHEDULE

AGREEMENT AMENDING THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF BOTSWANA 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 Republic of Botswana,

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 the Bechuanaland Protectorate immediately before 30th September, 1966, when the Bechuanaland Protectorate was established as an independent republic under the name of Botswana, and continued in force since that date between the Government of the United Kingdom and the Government of the Republic of Botswana (hereinafter referred to as "the Arrangement"),

Have agreed as follows:

ARTICLE 1

The Arrangement shall be amended—

(*a*) by the substitution for paragraph 2(1)(*b*) of the following new paragraph—

"(*b*) The term "Botswana" means the Republic of Botswana.";

(*b*) by the substitution for the references therein to "Bechuanaland" or "Bechuanaland Protectorate", "Bechuanaland enterprise" and "Bechuanaland tax" of references to "Botswana", "Botswana enterprise" and "Botswana tax" respectively;

(*c*) 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

(*d*) by the substitution for sub-paragraphs (1) and (2) of paragraph 14 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*) Botswana tax payable under the laws of Botswana and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Botswana 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 Botswana 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 Botswana 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 Botswana tax for which credit may be allowed under (*a*) of this sub-paragraph) the Botswana tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) If Botswana 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 Botswana regarding the allowance as a credit against Botswana tax of tax payable in a territory outside Botswana (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 Botswana 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 Botswana 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 Botswana as are necessary to give the Agreement the force of law in the United Kingdom and Botswana 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 Gaborone this Ninth day of April 1970.

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

For the Government of the Republic of Botswana:
J. G. HASKINS

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Agreement makes two amendments to the Arrangement between the United Kingdom and Botswana which is scheduled to the Double Taxation Relief (Taxes on Income) (Bechuanaland Protectorate) 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.

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