STATUTORY INSTRUMENTS

1974 No. 2149

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Falkland Islands) Order 1974

Laid before the House of Commons in draft

Made - - - - 18*th December* 1974

At the Court at Buckingham Palace, the 18th day of December 1974

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, as amended by section 98(2) of the Finance Act 1972**(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) (Falkland Islands) Order 1974.

2. It is hereby declared—

(*a*) that the arrangements specified in the Supplementary Arrangement set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Falkland Islands) Order 1949**(c)**, as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Falkland Islands) Order 1968**(d)**, have been made with the Government of the Falkland Islands 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 the Falkland Islands; and

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

N. E. Leigh.

(a) 1970 c. 10.
(b) 1972 c. 41.
(c) S.I. 1949/360 (1949 I, p. 2262).
(d) S.I. 1968/575 (1968 I, p. 1319).

SCHEDULE

SUPPLEMENTARY ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF THE FALKLAND ISLANDS TO AMEND THE EXISTING ARRANGEMENT MADE IN 1949 FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, AS MODIFIED BY THE ARRANGEMENT MADE IN 1968.

1. The Arrangement made in 1949 between His Majesty's Government and the Government of the Falkland Islands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as modified by the Arrangement made in 1968 shall be amended—

(*a*) by the addition in the first sub-paragraph of Paragraph 2(1)(*k*), immediately following the word "business", of the phrase—

"including a building site or construction or assembly project which exists for more than twelve months";

(*b*) by the substitution for Paragraph 6 of the following new Paragraph—

"6.—(1) (*a*) Dividends paid by a company which is a resident of the United Kingdom to a resident of the Colony may be taxed in the Colony.

(*b*) Where a resident of the Colony is entitled to a tax credit in respect of such a dividend under sub-paragraph (2) of this Paragraph tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(*c*) Except as aforesaid, dividends paid by a company which is a resident of the United Kingdom to a resident of the Colony who is subject to tax in the Colony on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of the Colony who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (3) of this Paragraph and provided he is subject to tax in the Colony on those dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of such credit over his liability to United Kingdom tax.

(3) Sub-paragraph (2) of this Paragraph shall not apply where the recipient of the dividend is a company which, either alone or together with one or more associated companies, controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purposes of this sub-paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(4) Dividends paid by a company which is a resident of the Colony to a resident of the United Kingdom who is subject to tax in the United Kingdom in respect thereof shall be exempt from any tax in the Colony which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(5) The term "dividends" as used in this Paragraph means income from shares, or any other item which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of the company.

(6) 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-paragraphs (1) and (2) or, as the case may be, sub-paragraph (4) of this Paragraph 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.

(7) The provisions of sub-paragraphs (1) and (2) or, as the case may be, sub-paragraph (4) of this Paragraph shall not apply where a resident of one of the territories has in the other territory a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with a business carried on through that permanent establishment. In such a case the provisions of Paragraph 3 shall apply.

(8) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived."

2. This Supplementary Arrangement shall enter into force when the last of all such things shall have been done in the United Kingdom and the Colony as are necessary to give the Supplementary Arrangement the force of law in the United Kingdom and the Colony respectively and shall thereupon have effect—

(*a*) as respects Paragraph 1(*a*) from the date of entry into force; and

(*b*) as respects Paragraph 1(*b*) in relation to dividends paid on or after 6th April 1973.

EXPLANATORY NOTE

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

The Supplementary Arrangement scheduled to this Order makes certain alterations to the Arrangement made in 1949 with the Falkland Islands, as amended by the Arrangement made in 1968.

The major alteration follows from the introduction of the new United Kingdom corporation tax system which, so far as it relates to the tax treatment of dividends paid by a United Kingdom company to an overseas shareholder, came into operation on 6th April 1973. The Supplementary Arrangement provides that where a United Kingdom company pays a dividend to a resident of the Falkland Islands other than a company which controls 10 per cent or more of the voting power in the paying company, the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit.

The Supplementary Arrangement also extends the definition of "permanent establishment" to include a building site or construction or assembly project which exists for more than 12 months.

The Supplementary Arrangement is expressed to take effect in relation to dividends paid on or after 6th April 1973. The extension of the definition of permanent establishment takes effect from the date of entry into force.

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