STATUTORY INSTRUMENTS

1974 No. 558

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Sweden) Order 1974

Laid before the House of Commons in draft

Made - - - 26th March 1974

At the Court at Windsor Castle, the 26th day of March 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 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) (Sweden) Order 1974.

2. It is hereby declared—

(*a*) that the arrangements specified in the Further Supplementary Protocol set out in the Schedule to this Order have been made with the Government of the Kingdom of Sweden 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 Sweden varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) Order 1961(c) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) Order 1968(d) and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) (No. 2) Order 1968(e); and

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

W. G. Agnew.

(a) 1970 c. 10.
(b) 1972 c. 41.
(c) S.I. 1961/577 (1961 I, p. 1265).
(d) S.I. 1968/1105 (1968 II, p. 3057).
(e) S.I. 1968/2034 (1968 III, p. 5496).

SCHEDULE

FURTHER SUPPLEMENTARY PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN, AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 28 JULY, 1960, AS MODIFIED BY THE PROTOCOL SIGNED AT LONDON ON 25 MARCH, 1966 AND THE SUPPLEMENTARY PROTOCOL SIGNED AT LONDON ON 27 JUNE, 1968.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Sweden;

Desiring to conclude a Further Supplementary Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 28 July, 1960, as modified by the Protocol signed at London on 25 March, 1966 and the Supplementary Protocol signed at London on 27 June, 1968 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

Article VII of the Convention shall be deleted and replaced by the following:

"ARTICLE VII

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

(*b*) Where a resident of Sweden is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article 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 and which are beneficially owned by a resident of Sweden shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Sweden who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph (3) of this Article and provided he is the beneficial owner of the 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 that tax credit over his liability to United Kingdom tax.

(3) Paragraph (2) of this Article shall not apply where the beneficial owner 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 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 Sweden and which are beneficially owned by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Sweden but the tax so charged shall not exceed:

(*a*) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 10 per cent of the gross amount of the dividends.

(5) The preceding paragraphs of this Article shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(6) Dividends paid before the date of entry into force of the Supplementary Protocol signed at London on 27 June, 1968 by a company which is a resident of one of the territories to a resident of the other territory who is subject to tax there in respect thereof (or would be so subject to tax there but for a provision in the Convention) shall be exempt from any tax which is chargeable in the first-mentioned territory on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(7) The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the territory of which the company making the distribution is a resident and, in the case of the United Kingdom, includes any item (other than interest exempt from United Kingdom tax under Article VIII of this Convention) which under the law of the United Kingdom is treated as a distribution of a company.

(8) Where the company paying a dividend is a resident of the United Kingdom and the beneficial owner of the dividend, being a resident of Sweden, owns 10 per cent or more of the class of shares in respect of which the dividend is paid, paragraphs (1), (2) and (6) of this Article 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 shares were acquired for *bona fide* commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(9) The provisions of paragraphs (1), (2), (4) and (6) of this Article shall not apply if the recipient of the dividends, being a resident of one of the territories, has in the other territory, of which the company paying the dividends is a resident, a permanent establishment, and the holding by virtue of which the dividends are paid is effectively connected with a trade or business carried on through such permanent establishment. In such a case the provisions of Article III shall apply.

(10) Where a company which is a resident of one of the territories derives profits or income from the other territory, that other territory may not impose any tax on the dividends paid by the company to persons who are not residents of that other territory, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other territory."

ARTICLE 2

(1) This Further Supplementary Protocol shall be ratified and the instruments of ratification shall be exchanged at Stockholm as soon as possible.

(2) This Further Supplementary Protocol shall enter into force after the expiration of a month following the date on which the instruments of ratification are exchanged(a) and shall thereupon have effect:

(*a*) in the United Kingdom in relation only to dividends due and payable on or after 6 April, 1973; and

(*b*) in Sweden in relation only to dividends due and payable on or after 1 January, 1974.

(a) Instruments of ratification were exchanged on 30th January 1974.

ARTICLE 3

This Further Supplementary Protocol shall remain in force as long as the Convention remains in force.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Further Supplementary Protocol.

Done in duplicate at London this 27 day of September 1973 in the English and Swedish languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:	For the Government of the Kingdom of Sweden:
ANTHONY H. F. ROYLE.	ÖLE JODAHL.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Further Supplementary Protocol scheduled to this Order makes certain alterations to the Convention with Sweden signed on 28th July 1960 (as amended by Protocols signed on 25th March 1966 and 27th June 1968). These alterations mostly follow 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 Protocol provides that where a United Kingdom company pays a dividend to a resident of Sweden 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 Protocol also provides that the rate of Swedish tax on dividends paid by a Swedish company to a resident of the United Kingdom is not to exceed 5 per cent where the dividend is paid to a United Kingdom company which controls at least 10 per cent of the voting power in the paying company and 10 per cent in all other cases. The Protocol is expressed to take effect in the United Kingdom in relation to dividends due and payable on or after 6th April 1973 and in Sweden in relation to dividends due and payable on or after 1st January 1974.

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