STATUTORY INSTRUMENTS

1975 No. 1043

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Switzerland) Order 1975

Laid before the House of Commons in draft

Made - - - - *25th June* 1975

At the Court at Buckingham Palace, the 25th day of June 1975

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) (Switzerland) Order 1975.

2. It is hereby declared—

(*a*) that the arrangements specified in the Supplementary Protocol 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) (Switzerland) Order 1955(c) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1967(d) have been made with the Swiss Federal Council 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 Switzerland; 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. 1955/422 (1955 I, p. 1001).
(d) S.I. 1967/26 (1967 I, p. 68).

SCHEDULE

SUPPLEMENTARY PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION, AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 30 SEPTEMBER 1954, AS MODIFIED BY THE PROTOCOL SIGNED AT LONDON ON 14 JUNE 1966.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council;

Desiring to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on 30 September 1954, as modified by the Protocol signed at London on 14 June 1966 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

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

"ARTICLE VI

(1) Dividends derived from a company which is a resident of Switzerland by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Switzerland, and according to the laws of Switzerland, but provided that the beneficial owner of the dividends is a resident of the United Kingdom 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 25 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 15 per cent of the gross amount of the dividends.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Switzerland may be taxed in Switzerland. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but provided that the beneficial owner of the dividends is a resident of Switzerland 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 25 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 15 per cent of the gross amount of the dividends.

(3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

(*a*) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Switzerland may be taxed in Switzerland.

(ii) Where a resident of Switzerland is entitled to a tax credit in respect of such a dividend under sub-paragraph (*b*) of this paragraph tax may also be charged in the United Kingdom, and according to 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.

(iii) Except as provided in sub-paragraph (*a*)(ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom by a resident of Switzerland who is the beneficial owner of those dividends shall be exempt from any tax which is chargeable in the United Kingdom on dividends.

(*b*) A resident of Switzerland who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (*c*) of this paragraph and provided he is the beneficial owner of the dividend, 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 that dividend, and to the payment of any excess of such credit over his liability to United Kingdom tax.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph 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 20 per cent of the voting power in the company paying the dividend. For the purpose 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; and a company shall be deemed to be controlled by another company if the latter controls more than 50 per cent of the voting power in the first-mentioned company.

(4) In this Article the term "dividends" means income from shares, *jouissance* shares or *jouissance* rights, 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 or royalties exempt from United Kingdom tax under Article VII or Article VIIA of this Convention) which under the law of the United Kingdom is treated as a distribution of a company.

(5) If the beneficial owner of a dividend is not subject to tax in respect thereof in the territory of which he is a resident and owns 10 per cent or more of the class of shares in respect of which the dividend is paid, then paragraphs (1), (2) and (3) 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 benficial 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.

(6) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the territories, carries on a trade or business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other territory professional services from a fixed base situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article III or Article XI, as the case may be, shall apply.

(7) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory that other territory may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other territory or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other territory nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in the other territory.

(8) Either of the Contracting Parties may, on or before 30 June in any calendar year after the year 1974, give to the other Contracting Party, through diplomatic channels, notice of termination of this Article and, in such event, it shall cease to be effective:

(*a*) in the United Kingdom: in relation to dividends paid on or after 6 April in the calendar year next following that in which such notice is given;

(*b*) in Switzerland: in relation to dividends paid on or after 1 January in the calendar year next following that in which such notice is given."

ARTICLE 2

Paragraph (3) of Article XV of the Convention shall be amended by replacing, wherever they occur, the words "paragraph (2) of Article VI" by the words "paragraph (2) or (3) of Article VI".

ARTICLE 3

(1) Paragraph (3) of Article XVI of the Convention shall be deleted and replaced by the following:

"(3) For the purpose of determining what reliefs or tax credit may be due under Articles VI and XIV the income of a partnership shall be regarded as that of its individual members."

(2) The following pararaph shall be added at the end of Article XVI of the Convention:

"(4) Where members of an approved investment fund of a territory are entitled to relief from tax or to the tax credit in the other territory under Article VI or Article VII as being the beneficial owners of the dividends or interest derived by the fund, the relief or the tax credit may be claimed on behalf of the members by the managers of the fund. The admission of any such claim in whole or in part by the competent authority of that other territory may be made subject to such conditions as that authority thinks proper to impose, after having consulted the competent authority of the first-mentioned territory, and shall be without prejudice to the right of the competent authority of the other territory to recover from a member of the fund any repayment of tax or any payment in respect of the tax credit to which he was not entitled under Article VI or Article VII. For the purposes of this paragraph an approved investment fund of the United Kingdom means a unit trust authorised under Section 17 of the Prevention of Fraud (Investments) Act of 1958 or under Section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland), 1940 and an approved investment fund of Switzerland means an investment fund as defined in Article 2 of the Federal Law for Investment Funds ("*loi fédérale sur les fonds de placement*") of 1 July 1966."

ARTICLE 4

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

(2) This Supplementary Protocol shall enter into force upon the exchange of instruments of ratification **(a)** and shall thereupon have effect in relation to dividends paid on or after 6 April 1973.

(3) The provisions of paragraph (2) of Article 3 shall apply to dividends and interest paid on or after 1 January 1971.

(a) Instruments of ratification were exchanged on 30th April 1975.

In witness whereof the undersigned, duly authorised thereto, have signed this Supplementary Protocol.

Done in duplicate at London this 2nd day of August 1974, in the English and French languages, both texts being equally authoritative.

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

For the Swiss Federal Council:
A. WEITNAUER

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Supplementary Protocol scheduled to this Order makes certain alterations to the Convention with Switzerland signed on 30th September 1954 (as amended by the Protocol signed on 14th June 1966).

The main change is in the Dividends Article. This takes account of the introduction of the imputation system of company tax in the United Kingdom 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. As in the existing Convention, the rate of tax on dividends flowing from one country to the other is normally not to exceed 5 per cent where the dividend is paid to a company which controls at least 25 per cent of the voting power in the paying company and 15 per cent in all other cases. The Supplementary Protocol, however, lays down a different rule for dividends paid by a United Kingdom company to a resident of Switzerland *as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom:* it provides, instead, that where a United Kingdom company pays a dividend to a resident of Switzerland other than a company which controls directly or indirectly at least 20 per cent 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 Protocol also provides that, subject to certain conditions, where members of an approved investment fund of one of the territories are entitled to relief from tax or to the tax credit as the beneficial owners of income derived by the fund, the relief or the tax credit may be claimed on behalf of the members by the managers of the fund.

The Supplementary Protocol is expressed to take effect in the United Kingdom and Switzerland in relation to dividends paid on or after 6th April 1973 but the provision relating to approved investment funds is to take effect in relation to dividends and interest paid on or after 1st January 1971.

SI 1975/1043
ISBN 0-11-051043-7

