STATUTORY INSTRUMENTS

1975 No. 426

INCOME TAX

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

Laid before the House of Commons in draft

Made - - - - 18*th March* 1975

At the Court at Buckingham Palace, the 18th day of March 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) (Malta) Order 1975.

2. It is hereby declared—

(*a*) that the arrangements specified in the Agreement 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) (Malta) Order 1962(c), have been made with the Government of Malta 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 Malta; 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. 1962/639 (1962 I, p. 666).

SCHEDULE

AGREEMENT AMENDING THE ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MALTA 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 Malta;

Desiring to amend the Arrangement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income between the two countries, published in the United Kingdom in Statutory Instrument No. 639 of 1962, and in Malta as Legal Notice No. 83 of 1961 (hereinafter referred to as "the Arrangement");

Have agreed as follows:

ARTICLE 1

Paragraph 1(1)(*a*) of the Arrangement shall be deleted and replaced by the following—

"(*a*) In the United Kingdom (and hereinafter referred to as "United Kingdom tax"):

The income tax and the corporation tax."

ARTICLE 2

The Arrangement shall be amended—

(1) by the deletion of paragraph 2(1)(*a*) and its replacement by the following—

"2.—(1) (*a*) The term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and sub-soil and their natural resources may be exercised."

(2) by the deletion of paragraph 2(1)(*b*) and its replacement by the following—

"2.—(1) (*b*) The term "Malta" means the Island of Malta, the Island of Gozo, and the other islands of the Maltese archipelago, including the territorial waters thereof, and any area outside the territorial sea of Malta which, in accordance with international law, has been or may hereafter be designated, under the laws of Malta concerning the Continental Shelf, as an area within which the rights of Malta with respect to the sea-bed and sub-soil and their natural resources may be exercised."

(3) by the deletion of paragraph 2(2) and its replacement by the following—

"2.—(2) Where under this Arrangement any income is exempt from tax or is taxed at a reduced rate in one of the territories and that income is subject to tax in the other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption or reduction of tax to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received."

ARTICLE 3

Paragraph 6 of the Arrangement shall be deleted and replaced by the following—

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

(*b*) Where a resident of Malta 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 aggre-

gate 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 Malta shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Malta 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 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) 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) (*a*) Dividends paid by a company which is a resident of Malta to a resident of the United Kingdom may, subject to the provisions of Paragraph 13(1) hereof, be taxed in the United Kingdom.

(*b*) Such dividends may also be charged to tax in Malta according to the law of Malta:

Provided that:

(i) where such dividends are paid by a company which is a resident of Malta to a resident of the United Kingdom who is the beneficial owner of the dividends they shall be exempt from any tax in Malta which is chargeable on dividends in excess of the tax chargeable in respect of the profits or income of the company, and

(ii) if the recipient submits returns and accounts to the taxation authorities of Malta in respect of his income liable to Malta tax for the relative year of assessment the tax chargeable as aforesaid shall be reduced to take account of the provisions of subsection (5) of Section (6) of the Aids to Industries Ordinance, 1959, or any reduction of the tax payable by the company distributing the dividends as a consequence of the grant to the company of an investment allowance, under Section 6A of the Ordinance, in respect of the year in which the profits so distributed were earned by 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) Relief under this Paragraph from the tax of one of the territories shall be subject to the same limitations as are imposed in respect of relief or exemption from tax under the law of that territory by any provisions enacted in order to maintain the proper incidence of liability to tax and to prevent the obtaining of undue tax advantages.

(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 un-

distributed 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."

ARTICLE 4

The Arrangement shall be amended—

(1) by the substitution in paragraph 8(1) for the words "including pensions" of the words "other than pensions" and by the deletion of the words "(where the remuneration is not a pension)".

(2) by the deletion in paragraph 10(1) of the words "(other than a pension paid by the Government of Malta for services rendered to it in the discharge of governmental functions)", and similarly by the deletion in paragraph 10(2) of the words "(other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions)".

ARTICLE 5

The Arrangement shall be amended—

(1) by the substitution for sub-paragraphs (1) and (2) of paragraph 13 of the following three 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*) Malta tax payable under the laws of Malta and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Malta (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) 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 Malta tax is computed.

(*b*) Where a company which is a resident of Malta 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 Malta tax for which credit may be allowed under (*a*) of this sub-paragraph) the Malta tax payable by that first-mentioned company in respect of the profits out of which such dividend is paid.

(2) For the purposes of sub-paragraph (1), "Malta tax payable" shall be deemed to include any amount which would have been payable as Malta tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

(*a*) Section 6 (or, by way of investment allowance, Section 6A) of the Aids to Industries Ordinance, 1959, so far as those provisions were in force on, and have not been modified since, the date when this Arrangement came into force, or have been modified only in minor respects so as not to affect their general character;

(*b*) any other provision granting exemption or reduction of tax which is agreed by the taxation authorities of the Contracting Governments to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Where dividends are paid or distributed by a company which is a resident of Malta out of its gains or profits earned in any year in respect of which the company is in receipt of any such exemption or reduction of tax, "Malta tax payable" in respect of such dividends shall be deemed to be equal to the rate of tax which would otherwise be chargeable under the law of Malta on that company.

(3) Subject to the provisions of the law of Malta regarding the allowance as a credit against Malta tax of tax payable in a territory outside Malta (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 (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any Malta tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed.

(*b*) Where a company which is a resident of the United Kingdom pays a dividend to a company resident in Malta 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."; and

(2) by renumbering sub-paragraph (3) of paragraph 13 as sub-paragraph (4).

ARTICLE 6

Paragraph 16(*a*) of the Arrangement shall be deleted and replaced by the following—

"(*a*) In the United Kingdom:

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

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

ARTICLE 7

(1) This Agreement shall enter into force when the last of all such things shall have been done in the United Kingdom and Malta as are necessary to give the Agreement the force of law in the United Kingdom and Malta respectively, and shall thereupon have effect:

(*a*) in relation to United Kingdom income tax, for any year of assessment beginning on or after 6 April 1973;

(*b*) in relation to United Kingdom corporation tax, for any financial year beginning on or after 1 April 1973; and

(*c*) in relation to Malta tax for any year of assessment beginning on or after 1 January 1973.

(2) Notwithstanding paragraph (1) of this Article, where any greater relief from tax would have been afforded by any provision of the Arrangement than is due under the Arrangement as amended by this Agreement, any such provision as aforesaid shall continue to have effect in the United Kingdom for any year of assessment or financial year beginning before the entry into force of this Agreement, and in Malta for any year of assessment beginning before the entry into force of this Agreement.

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

Done in duplicate at Valletta this 29th day of November, 1974.

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

ROBIN HAYDON.

For the Government of Malta:

J. ABELA.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Agreement scheduled to this Order makes certain amendments to the Double Taxation Arrangement which has been in operation since 1962 between the United Kingdom and Malta.

The principal amendments are as follows.

Where a United Kingdom company pays a dividend to a resident of Malta the Agreement provides that the recipient is, subject to certain conditions, to be entitled to the tax credit which an individual recipient of such a dividend who is resident in the United Kingdom would be entitled to receive. Income tax may however be charged by the United Kingdom, at a rate not exceeding fifteen per cent, on the aggregate of the dividend and the tax credit. This amended treatment of dividends follows from the introduction in the United Kingdom of the new corporation tax system which, so far as it affects dividends, came into operation on 6th April 1973.

The entitlement to relief from double taxation by way of credit for tax on the profits out of which a dividend has been paid is restricted by the Agreement to companies controlling ten per cent or more of the voting power in the company paying the dividend.

The credit given by the United Kingdom for Malta tax which would have been payable but for certain reliefs designed to promote industrial development in Malta is extended by the Agreement to include credit for tax which would have been payable but for further relief granted by way of investment allowance under an amendment made in 1974 to the Maltese Aids to Industries Ordinance 1959.

The Agreement provides that pensions paid by the Government of one of the two countries to residents of the other who are subject to tax in that other country are no longer to be taxable in the paying country.

The Agreement is in general to take effect in the United Kingdom for 1973-74 and subsequent years.

SI 1975/426
ISBN 0-11-050426-7

