STATUTORY INSTRUMENTS

1977 No. 1300

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Netherlands) Order 1977

Laid before the House of Commons in draft

Made - - - - *29th July* 1977

At the Court at Windsor Castle, the 29th day of July 1977

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons 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, section 98(2) of the Finance Act 1972(**b**) and section 39 of the Finance Act 1965(**c**), as amended, 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) (Netherlands) Order 1977.

2. It is hereby declared—

(*a*) that the arrangements specified in the 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) (Netherlands) Order 1968(**d**), have been made with the Government of the Kingdom of the Netherlands with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum revenue tax or capital gains tax and taxes of a similar character imposed by the laws of the Netherlands; and

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

Clerk of the Privy Council.

(**a**) 1970 c. 10. (**b**) 1972 c. 41. (**c**) 1965 c. 25. (**d**) S.I. 1968/577 (1968 I, p. 1326).

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT LONDON ON 31 OCTOBER 1967

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands:

Desiring to conclude a Protocol to amend the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, signed at London on 31 October 1967, (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Paragraph (1) of Article 2 of the Convention shall be deleted and replaced by the following:

"(1) The taxes which are the subject of this Convention are:

(*a*) In the United Kingdom of Great Britain and Northern Ireland:

(i) the income tax;

(ii) the corporation tax;

(iii) the petroleum revenue tax; and

(iv) the capital gains tax;

(hereinafter referred to as "United Kingdom tax");

(*b*) In the Netherlands:

(i) the income tax (inkomstenbelasting);

(ii) the wages tax (loonbelasting);

(iii) the company tax (vennootschapsbelasting);

(iv) the dividend tax (dividendbelasting); and

(v) the capital tax (vermogensbelasting);

(hereinafter referred to as "Netherlands tax")."

ARTICLE II

Article 11 of the Convention shall be deleted and replaced by the following:

"ARTICLE 11

Dividends

(1) Dividends derived from a company which is a resident of one of the States by a resident of the other State may be taxed in that other State.

(2) However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but where such dividends are beneficially owned by a resident of the other State 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 the capital of which is wholly or partly divided into shares and it 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.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) As long as an individual resident in the United Kingdom is entitled under United Kingdom law to a tax credit in respect of dividends paid by a company which is resident in the United Kingdom, paragraph (2) of this Article shall not apply to dividends derived from a company which is a resident of the United Kingdom by a resident of the Netherlands. In these circumstances the following provisions of this paragraph shall apply:

(*a*) (i) Where a resident of the Netherlands 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 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.

(ii) Where a resident of the Netherlands is entitled to a tax credit in respect of such a dividend under sub-paragraph (*c*) 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 5 per cent.

(iii) Except as provided in sub-paragraphs (*a*)(i) and (*a*)(ii) of this paragraph dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of the Netherlands shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(*b*) A resident of the Netherlands who receives dividends 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 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 tax in the United Kingdom.

(*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 10 per cent or more of the voting power in the company paying the dividend. In these circumstances a company which is a resident of the Netherlands and receives dividends from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividends, be entitled to a tax credit equal to one half of the tax credit 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 its liability to tax in the United Kingdom. For the purposes of this sub-paragraph, two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(4) The term "dividends" for United Kingdom tax purposes includes any item which under the law of the United Kingdom is treated as a distribution and for Netherlands tax purposes includes any item which under the law of the Netherlands is subject to dividend tax.

(5) If the beneficial owner of the dividends being a resident of one of the States owns 10 per cent or more of the class of shares in respect of which the dividends are paid and does not suffer tax thereon in that State then paragraph (2), or as the case may be paragraph (3), of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends 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 dividends became the owner of 10 per cent or more of the class of shares in question. Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(6) The provisions of paragraph (1) and of paragraph (2) or (3), as the case may be, shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, 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 the business carried on through such permanent establishment. In such a case the provisions of Article 8 shall apply.

(7) Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, 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 State, except 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 State."

ARTICLE III

Paragraphs (2) and (5) of Article 12 of the Convention shall be deleted and replaced by the following:

"(2) The term "interest" for United Kingdom tax purposes includes any item which under the law of the United Kingdom is treated as interest and for Netherlands tax purposes includes any item which under the law of the Netherlands is treated as interest, but subject to the provisions of paragraph (4) of this Article shall not include any item which is treated as a dividend under the provisions of Article 11.

(5) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person the amount of the interest paid exceeds the amount which would have been determined, taking into consideration the terms and amount of the debt-claim which would have been agreed upon, by the payer and the recipient in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payment shall remain taxable according to the law of each State, due regard being had to the other provisions of this Convention."

ARTICLE IV

Article 14 of the Convention shall be deleted and replaced by the following:

"ARTICLE 14

Application of Articles 11, 12 and 13

(1) The reductions and exemptions from tax in the State of source given by Articles 11, 12 and 13 as well as the payment of the United Kingdom tax credit referred to in paragraph (3) of Article 11 shall be effected in accordance with the mode of application determined (having due regard to the taxation laws of that State) by the taxation authorities of the States.

(2) Where tax has been deducted at the source in excess of the amount of tax chargeable under the provisions of Articles 11, 12 or 13 the excess amount of tax shall be refunded upon application to the taxation authorities concerned, provided that the application is made within a period of six years after the end of the calendar year in which the tax was deducted.

(3) The provisions of paragraph (2) or, as the case may be, paragraph (3) of Article 11, paragraph (1) of Article 12 and paragraph (1) of Article 13 shall not apply if:

(*a*) the holding, security or asset giving rise to the income in question was obtained in virtue of any contract, option or any arrangement under which the beneficial owner agreed, or might be obliged, to sell again or to transfer again the holding, security or asset or to sell or transfer a similar holding, security or asset, or

(*b*) the beneficial owner of the holding, security or asset giving rise to the income in question sells the holding, security or asset within three months from the date on which he acquired it."

ARTICLE V

Paragraph (2)(*b*) of Article 26 of the Convention shall be deleted and replaced by the following:

"(2)(*b*) Without prejudice to the application of the provisions concerning the compensation of losses in the unilateral regulations for the avoidance of double taxation the Netherlands shall allow a deduction from the amount of tax computed in conformity with paragraph (2)(*a*) of this Article equal to such part of that tax which bears the same proportion to the aforesaid tax, as the part of the income or capital which is included in the basis mentioned in paragraph (2)(*a*) of this Article and may be taxed in the United Kingdom according to Articles 7, 8, 11 (paragraph (6)), 12 paragraph (3)), 13 (paragraph (3)), 15 (paragraph (1)), 16, 17 (paragraphs (1) and (3)), 18 (paragraph (1)), 19, 21 (paragraphs (2) and (3)), and 24 (paragraphs (1) and (2)) of this Convention bears to the total income or capital which forms the basis mentioned in paragraph (2)(*a*) of this Article.

Further, the Netherlands shall allow a deduction from the Netherlands tax so computed for such items of income, as may be taxed in the United Kingdom according to Articles 11 (paragraphs (2) or (3), as the case may be) and 15 (paragraph (4)) and are included in the basis mentioned in paragraph (2)(*a*) of this Article. The amount of this deduction shall be the lesser of the following amounts:

(i) the amount equal to the United Kingdom tax;

(ii) the amount of the Netherlands tax which bears the same proportion to the amount of tax computed in conformity with paragraph (2)(*a*) of this Article, as the amount of the said items of income bears to the amount of income which forms the basis mentioned in paragraph (2)(*a*) of this Article."

ARTICLE VI

As respects the Kingdom of the Netherlands this Protocol shall only apply to the Part of the Kingdom of the Netherlands that is situated in Europe.

ARTICLE VII

Each of the Contracting Parties shall notify to the other the completion of the procedure required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(*a*) in the United Kingdom:

(i) for any chargeable period beginning on or after 1 January 1975; and

(ii) in relation to dividends paid on or after 6 April 1975;

(*b*) in the Netherlands:

(i) for taxable years and periods beginning on or after 1 January 1975; and

(ii) in relation to dividends paid on or after 6 April 1975.

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

Done in duplicate at London this 22nd day of March 1977 in the English and Dutch languages, both texts being equally authoritative.

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

FRANK A. JUDD

For the Government of the Kingdom of the Netherlands

R. FACK

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Netherlands) Order 1968. These alterations follow mainly 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 United Kingdom companies to overseas shareholders, came into operation on 6 April 1973.

The Protocol provides rules for the taxation of dividends which are to apply 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.

Where a United Kingdom company pays a dividend to a Netherlands company controlling 10 per cent or more of its voting power, the Netherlands company receiving the dividend will be entitled to a tax credit equal to one half of the tax credit which would be payable to a United Kingdom resident individual less a sum of not more than 5 per cent of the aggregate amount of the dividend and the tax credit paid. Where the recipient is an individual resident of the Netherlands or a Netherlands company controlling less than 10 per cent of the voting power of the United Kingdom company, the tax credit payable will be equal to the tax credit which would be payable to a United Kingdom resident individual less a sum not exceeding 15 per cent of the aggregate of the dividend and the tax credit.

Certain consequential changes have been made to the provisions under which residents of the Netherlands receiving dividends from United Kingdom companies are given double taxation relief in the Netherlands. The Protocol also provides that the rate of Netherlands withholding tax on dividends paid to a United Kingdom company controlling at least 25 per cent of the voting power of the Netherlands company paying the dividend will be limited to a maximum of 5 per cent. In all other cases the Netherlands withholding tax will be not more than 15 per cent.

The Protocol also amends the list of taxes covered by the Convention and removes from the definition of interest any item of interest which is treated in the Netherlands or the United Kingdom as a dividend. It provides for refunds to be made where excessive tax has been withheld at source.

The Protocol is expressed to take effect in relation to dividends paid on or after 6 April 1975.

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