STATUTORY INSTRUMENTS

1980 No. 1530

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Japan) Order 1980

Laid before the House of Commons in draft

Made - - - - 13*th October* 1980

At the Court at Buckingham Palace, the 13th day of October 1980

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 that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, 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) (Japan) Order 1980.

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) (Japan) Order 1970(b) have been made with the Government of Japan 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 Japan; and

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

N. E. Leigh,
Clerk of the Privy Council.

(a) 1970 c. 10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).
(b) S.I. 1970/1948.

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND JAPAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

The United Kingdom of Great Britain and Northern Ireland and Japan;

Desiring to conclude a Protocol to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and Japan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Tokyo on 10 February 1969 (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:

(i) the income tax;

(ii) the corporation tax;

(iii) the capital gains tax;

(iv) the development land tax; and

(v) the petroleum revenue tax;

(*b*) in Japan:

(i) the income tax;

(ii) the corporation tax; and

(iii) the local inhabitant taxes."

ARTICLE II

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

"ARTICLE 11

(1) Dividends paid by a company which is a resident of Japan to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Japan, and according to the law of Japan, but if the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed:

(*a*) 10 per cent of the gross amount of the dividends if the beneficial owner is a company which owns at least 25 per cent of the voting power in the company paying the dividends during the whole of the period of twelve months immediately before the end of the accounting period for which the distribution of profits takes place;

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

(2) Dividends paid by a company which is a resident of the United Kingdom to a resident of Japan may be taxed in Japan. Such dividends may also be taxed in the United Kingdom, and according to the law of the United Kingdom, but if the beneficial owner of the dividends is a resident of Japan the tax so charged shall not exceed:

(*a*) 10 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*) 15 per cent of the gross amount of the dividends in all other cases.

(3) However, as long as an individual resident in the United Kingdom is entitled under the law of the United Kingdom to a tax credit in respect of a dividend 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) A dividend paid by a company which is a resident of the United Kingdom to a resident of Japan may be taxed in Japan.

(ii) Where a resident of Japan is entitled to a tax credit in respect of a dividend under sub-paragraph (*b*) of this paragraph tax may also be charged in the United Kingdom, and according to the law 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, a dividend paid by a company which is a resident of the United Kingdom to a resident of Japan who is the beneficial owner of that dividend shall be exempt from any tax which is chargeable in the United Kingdom on dividends.

(iv) The amount of the tax credit referred to in sub-paragraph (*a*)(ii) of this paragraph, when paid to a resident of Japan, shall be treated as a dividend for the purpose of the taxation law of Japan.

(*b*) A resident of Japan 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 that tax 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 10 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) The term "dividends" as used in this Article means income from 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 Contracting State of which the company making the distribution is a resident and also includes any other item which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company; the term does not however include any interest granted relief from tax under the provisions of Article 12 of this Convention.

(5) 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 a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other Contracting State independent personal 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 8 or Article 15, as the case may be, shall apply.

(6) Relief under this Article from the tax of a Contracting State shall be subject to the same limitations as are imposed in respect of relief or exemption from tax under the law of that Contracting State 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) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other Contracting State 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 Contracting State 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 Contracting State, 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 that other Contracting State."

ARTICLE III

Paragraph (6) of Article 12 of the Convention shall be deleted and replaced by the following:

"(6) Any provision in the law of either Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution or dividend by the company paying such interest. The provisions of this paragraph shall not, however, apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for *bona fide* commercial reasons."

ARTICLE IV

Article 23 of the Convention shall be deleted and replaced by the following:

"ARTICLE 23

(1) Items of income of a resident of a Contracting State, wherever arising, other than income paid out of trusts, which are not dealt with in the foregoing Articles of this Convention shall be taxable only in that Contracting State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other Contracting State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 8 or Article 15, as the case may be, shall apply."

ARTICLE V

The following new Article shall be inserted immediately after Article 28 of the Convention:

"ARTICLE 28A

Where the persons participating in an approved investment fund of a Contracting State are entitled to relief from tax or to the tax credit in the other Contracting State under Article 11 or Article 12 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 persons participating by the managers or trustees of the fund. The admission of any such claim in whole or in part by the other Contracting State may be made subject to such conditions as that other Contracting State thinks proper to impose, after having consulted the first-mentioned Contracting State, in order to preclude the granting of such relief or of the tax credit to persons participating in the fund who are not entitled to the relief or to the tax credit. The admission of any such claim shall also be without prejudice to the right of the other Contracting State to recover from a person participating in the fund any repayment in respect of relief from tax or any payment in respect of the tax credit to which he was not entitled under Article 11 or Article 12. For the purposes of this Article an approved investment fund of the United Kingdom means a unit trust authorised under section 17 of the Prevention of Fraud (Investments) Act 1958 or under section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940, and an approved investment fund of Japan means a securities investment trust as defined in Article 2 of the Securities Investment Trust Law (Law No. 198 of 1951) or a loan trust as defined in Article 2 of the Loan Trust

Law (Law No. 195 of 1952), so far as these provisions were in force on, and have not been modified since, the date of the signature of the Protocol amending this Convention, or have been modified only in minor respects so as not to affect their general character."

ARTICLE VI

Article 30 of the Convention shall be deleted and replaced by the following:

"ARTICLE 30

This Convention shall continue in effect indefinitely but either of the Contracting States may, on or before 30 June in any calendar year beginning after the expiration of a period of five years from the date of its entry into force, give to the other Contracting State, through the diplomatic channel, written notice of termination. In such event, the Convention shall cease to have effect:

(*a*) in the United Kingdom:

(i) as respects income tax and capital gains 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;

(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;

(iii) as respects development land tax, for any realised development value accruing on or after 1 April in the calendar year next following that in which the notice is given;

(iv) as respects petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given;

(*b*) in Japan:

as respects income for any taxable year beginning on or after 1 January in the calendar year next following that in which the notice is given."

ARTICLE VII

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

(2) This Protocol shall enter into force after the expiration of thirty days following the date on which the instruments of ratification are exchanged(a) and the Convention shall thereupon have effect as amended by this Protocol:

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

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year following that in which the instruments of ratification are exchanged;

(ii) as respects corporation tax, for any financial year beginning on or after 1 April in the calendar year following that in which the instruments of ratification are exchanged;

(iii) as respects development land tax, for any realised development value accruing on or after 1 April in the calendar year following that in which the instruments of ratification are exchanged; and

(iv) as respects petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year following that in which the instruments of ratification are exchanged;

(*b*) in Japan:

as respects income for any taxable year beginning on or after 1 January in the calendar year following that in which the instruments of ratification are exchanged.

(a) Instruments of ratification were exchanged on 30 September 1980.

ARTICLE VIII

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

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

Done in duplicate at Tokyo this fourteenth day of February, 1980, in the English and Japanese languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

MICHAEL WILFORD.

For Japan:

SABURO OKITA.

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) (Japan) Order 1970. 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 a United Kingdom company to overseas shareholders, came into operation on 6 April 1973.

Where a United Kingdom company pays a dividend to a resident of Japan controlling less than 10 per cent of the voting power in the United Kingdom company, the recipient of the dividend will be entitled to the tax credit which would be payable to a United Kingdom resident individual, less a sum of not more than 15 per cent of the aggregate amount of the dividend and the credit.

The Protocol provides that the rate of Japanese tax on dividends paid by a Japanese company to a resident of the United Kingdom is not to exceed 10 per cent where the dividend is paid to a United Kingdom company which owns at least 25 per cent of the voting power in the paying company. In all other cases the rate of Japanese tax will not exceed 15 per cent.

The Protocol also revises the provisions of the existing Convention concerning the circumstances in which interest treated as a distribution under domestic law is to be treated as a distribution for treaty purposes.

A further provision of the Protocol expressly permits the managers or trustees of an approved investment fund (in the United Kingdom an authorised unit trust) to make claims to the benefits of Article 11 or Article 12 of the Convention on behalf of the persons participating in the fund.

The Protocol is to take effect in the United Kingdom for the tax year, financial year or chargeable period, as appropriate, beginning in the calendar year following that in which the Protocol is ratified. The list of taxes covered by the Convention is revised to include explicitly the petroleum revenue tax and the development land tax.

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