STATUTORY INSTRUMENTS

1980 No. 1532

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Sweden) 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) (Sweden) Order 1980.

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(b), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) Order 1968(c) and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) (No. 2) Order 1968(d) and by the arrangements set out in the Double Taxation Relief (Taxes on Income) (Sweden) Order 1974(e); 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. 1961/577. (c) S.I. 1968/1105. (d) S.I. 1968/2034. (e) S.I. 1974/558.

SCHEDULE

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN, FURTHER 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.

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

Desiring to conclude a Protocol to amend further 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, (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) Dividends derived from a company which is a resident of Sweden by a resident of the United Kingdom shall be taxable only in the United Kingdom if the beneficial owner is a resident of the United Kingdom and is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends. In all other cases, dividends derived from a company which is a resident of Sweden by a resident of the United Kingdom may also be taxed in Sweden according to the laws of Sweden but, provided that the beneficial owner is a resident of the United Kingdom, the tax so charged shall not exceed 5 per cent.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Sweden shall be taxable only in Sweden if the beneficial owner is a resident of Sweden and is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends. In all other cases, dividends derived from a company which is a resident of the United Kingdom by a resident of Sweden may also be taxed in the United Kingdom according to the laws of the United Kingdom, but, provided that the beneficial owner is a resident of Sweden, the tax so charged shall not exceed 5 per cent.

(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 Sweden may be taxed in Sweden.

(ii) Where a resident of Sweden 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.

(iii) Where a resident of Sweden 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.

(iv) Except as provided in sub-paragraph (*a*)(ii) and (*a*)(iii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom by a resident of Sweden 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 Sweden 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. In these circumstances a company which is a resident of Sweden and receives a dividend from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividend, 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 that dividend, and to the payment of any excess of that tax credit over its liability to United Kingdom tax. 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 territory of which the company making the distribution is a resident and also includes any other item (other than interest or royalties relieved from tax under the provisions of Article VIII or Article IX of this Convention) 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 a company.

(5) The provisions of paragraphs (1), (2) and (3) of this Article shall not apply if the beneficial owner of the dividend, being a resident of one of the territories, carries on business in the other territory of which the company paying the dividends is a resident, through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article III shall apply.

(6) 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 (2) and (3) of this Article shall not apply to the dividend to the extent that it can have been paid 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.

(7) 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, 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 such other territory."

ARTICLE 2

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 thirty days after the date of the later of these notifications and shall thereupon have effect in the United Kingdom in relation to dividends paid on or after 6 April 1978 and in Sweden in relation to dividends paid on or after 1 January 1979.

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

Done in duplicate at Stockholm this Sixth day of June 1979 in the English and Swedish languages, both texts being equally authoritative.

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

JEFFREY PETERSEN

For the Government of the Kingdom of Sweden:

HANS BLIX

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Further Amending Protocol scheduled to this Order makes certain alterations to the Convention with Sweden signed on 28 July 1960 (as amended by Protocols signed on 25 March 1966, 27 June 1968 and 27 September 1973). These alterations 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 overseas shareholders, came into operation on 6 April 1973.

Where a United Kingdom company pays a dividend to a Swedish company controlling 10 per cent or more of its voting power, the Swedish corporate shareholders will receive 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 credit. Where the recipient is an individual resident in Sweden or a Swedish company controlling less than 10 per cent of the voting power of the United Kingdom company, the tax credit 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 tax credit.

The Further Amending Protocol also provides that dividends paid by a Swedish company to a company which is a resident of the United Kingdom and controls at least 10 per cent of the voting power in the paying company are to be taxable only in the United Kingdom. In all other cases the rate of Swedish tax is not to exceed 5 per cent.

The Further Amending Protocol is to have effect in the United Kingdom in relation to dividends paid on or after 6 April 1978 and in Sweden in relation to dividends paid on or after 1 January 1979.

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