STATUTORY INSTRUMENTS

1983 No. 1902

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Netherlands) Order 1983

Laid before the House of Commons in draft
Made - - - - - 21st December 1983

At the Court at Buckingham Palace, the 21st day of December 1983

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) (Netherlands) Order 1983.

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 1980(**b**), have been made with the Government of the Netherlands with a view to affording relief from double taxation in relation to income tax, corporation 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 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. 1980/1961.

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 GAINS, SIGNED AT THE HAGUE ON 7 NOVEMBER 1980

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 gains, signed at The Hague on 7 November 1980 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

The following new Article shall be inserted immediately after Article 22 of the Convention:

"ARTICLE 22A

Miscellaneous Rules applicable to certain offshore activities

Notwithstanding any other provision of this Convention:

(1) An enterprise of one of the States which carries on activities offshore in the other State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other State shall, subject to paragraphs (2) and (4) of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein.

(2) The provisions of paragraph (1) of this Article shall not apply where the activities referred to therein are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months. For the purposes of this paragraph:

(a) where an enterprise carrying on activities referred to in paragraph (1) of this Article in the other State is associated with another enterprise carrying on substantially similar activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;

(b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

(3) A resident of one of the States who carries on activities offshore in the other State, in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other State, which consist of professional services or other activities of an independent character shall be deemed to be performing those activities from a fixed base in the other State. However, this paragraph shall not apply where such activities are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months.

(4) Profits from the transportation of supplies or personnel to a location where activities in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in one of the States, or from the operation of tugboats and similar vessels in connection with such activities, shall be taxable only in the State in which the place of effective management of the enterprise is situated.

(5) Gains derived by a resident of one of the States from the alienation of rights to assets to be produced by the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other State, including rights to interests in or to the benefit of such assets, or from the alienation of shares deriving their value or the greater part of their value directly or indirectly from such rights, may be taxed in that other State.

(6) *(a)* Subject to sub-paragraph *(b)* of this paragraph, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State;

(b) Salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to a location where activities connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in one of the States, or in respect of an employment exercised aboard a tugboat or similar vessel in connection with such activities, shall be taxable only in the State of which the employee is a resident.

(7) For the items of income which may be taxed in the United Kingdom according to paragraphs (1), (3) and (5) of this Article, the Netherlands shall allow a deduction from its tax which shall be computed in conformity with the rules laid down in paragraph (2)*(c)* of Article 22.

(8) Where documentary evidence is produced that tax has been paid in the United Kingdom on the items of income which may be taxed in the United Kingdom according to paragraph (6)*(a)* of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph (2)*(b)* of Article 22."

ARTICLE II

Each of the Contracting Governments 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, for any year of assessment, financial year or chargeable period beginning on or after 1 April in the calendar year next following that in which the Protocol enters into force;

(b) in the Netherlands, for taxable years and periods beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

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

Done in duplicate at London this 12th day of July 1983 in the English and Netherlands languages, both texts being equally authoritative.

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

Young

For the Government of the Kingdom of the Netherlands:

J. L. R. Huydecoper

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order amends the Convention with the Netherlands signed on 7 November 1980 by, inter alia, providing rules for avoidance of the double taxation of residents of the United Kingdom and the Netherlands in respect of income, profits and capital gains from activities connected with offshore oil and gas exploration or exploitation on the United Kingdom and Netherlands Continental Shelves.

Trading profits from such activities are deemed to arise through a permanent establishment or a fixed base and may therefore be taxed in the country in which the activities are carried on. There is a de minimis rule providing for activities not carried on for more than 30 days in aggregate in any period of 12 months to be ignored. Profits connected with the transportation of supplies or personnel, however, are to be taxed only in the country where the place of effective management is situated.

Employees may be taxed in the country in which the employment is exercised unless they are employed on a ship or aircraft engaged in the transportation of supplies or personnel, in which case they are to be taxed only in their own country of residence.

A further rule is included to cover any capital gains arising in respect of the disposal of oil and gas exploration or exploitation rights.

Where income from such activities continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence.

The Protocol is to take effect in the United Kingdom on or after 1 April in the calendar year following that in which each country has notified the other of the completion of its legislative procedures.

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