STATUTORY INSTRUMENTS

1984 No. 364

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Luxembourg) Order 1984

Laid before the House of Commons in draft

Made - - - 14*th March* 1984

At the Court at Buckingham Palace, the 14th day of March 1984

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) (Luxembourg) Order 1984.

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) (Luxembourg) Order 1968 (**b**) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Luxembourg) Order 1980 (**c**) , have been made with the Government of the Grand Duchy of Luxembourg 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 Luxembourg; 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. 1968/1100.
(**c**) S.I. 1980/567.

SCHEDULE

SECOND PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT LONDON ON 24 MAY 1967, AS MODIFIED BY THE PROTOCOL SIGNED AT LONDON ON 18 JULY 1978

The United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg;

Desiring to conclude a Supplementary Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed at London on 24 May 1967, as modified by the Protocol signed at London on 18 July 1978 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

Paragraph (2) of Article III of the Convention shall be deleted and paragraph (3) of that Article shall be renumbered as paragraph (2).

ARTICLE 2

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

" ARTICLE X

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

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the law of that State, but if the beneficial owner of the dividends is a resident of the other Contracting 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. For the purposes of sub-paragraph *(a)* of this paragraph indirect control of the voting power shall be deemed to exist when a company being a resident of one Contracting State controls together with one or more companies at least 25 per cent of the voting power in a company that is a resident of the other Contracting State provided that the first mentioned company controls more than 50 per cent of the voting power in the one or more companies aforementioned.

(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 Luxembourg. In these circumstances the following provisions of this paragraph shall apply:

(a) (i) Where a resident of Luxembourg 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 Luxembourg 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 by a resident of Luxembourg 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 Luxembourg who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraphs *(c)* and *(d)* 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 Luxembourg 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 and subject to the provisions of sub-paragraph *(d)* of this paragraph, 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.

(d) (i) The provisions of neither sub-paragraph *(b)* nor sub-paragraph *(c)* of this paragraph shall apply unless the recipient of a dividend shows (if required to do so by the competent authority of the United Kingdom on receipt of a claim by the recipient to have the tax credit set against United Kingdom income tax chargeable on him or to have the excess of the credit over that income tax paid to him) that the shareholding in respect of which the dividend was paid was acquired by the recipient for bona fide commercial reasons or in the ordinary course of making or managing investments and it was not the main object nor one of the main objects of that acquisition to obtain entitlement to the tax credit referred to in sub-paragraph *(b)* or sub-paragraph *(c)* as the case may be.

(ii) Luxembourg may, on or before 30 June in any calendar year, give the United Kingdom through the diplomatic channel, notice of termination of this sub-paragraph and, in such event, it shall cease to have effect in relation to dividends paid on or after 6 April in the calendar year next following that in which such notice is given.

(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 Luxembourg tax purposes includes any item which under the law of Luxembourg is treated as a distribution out of earnings and profits, and the income derived by a sleeping partner from his participation as such.

(5) The provisions of paragraph (1) and of paragraph (2) or (3) of this Article, as the case may be, shall not apply if the recipient of the dividends, being a resident of one of the Contracting States, has in the other Contracting 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 VII shall apply.

(6) Where a company which is a resident of one of the Contracting States derives profits or income from the other Contracting 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 3

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

"(1) Interest arising in one of the Contracting States which is derived and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State."

ARTICLE 4

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

"(1) Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However such royalties may also be taxed in the Contracting State in which they arise and according to the law of that State, but if the recipient is the beneficial owner of the royalties the tax so charged shall not exceed 5 per cent of the gross amount of the royalties."

ARTICLE 5

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

" ARTICLE XIII A

Notwithstanding any other provision of this Convention, gains derived by a resident of Luxembourg from the alienation of rights to oil, gas, etc. to be produced by the exploration or exploitation of the sea bed and its sub-soil situated in the United Kingdom, under the authority of a licence granted by the United Kingdom, including rights to interests in or to the benefit of such oil, gas, etc., 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 the United Kingdom."

ARTICLE 6

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

" ARTICLE XVIII

(1) Subject to the provisions of paragraphs (1) and (2) of Article XIX pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, pensions paid under the social security legislation of a Contracting State may be taxed in that State."

ARTICLE 7

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

" ARTICLE XXII

(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 State.

(2) The provisions of paragraph (1) shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article VI, 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 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 VII or Article XIV, as the case may be, shall apply."

ARTICLE 8

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

"(2)*(a)* Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Luxembourg shall, subject to the provisions of sub-paragraphs *(b)* and *(d)* of this paragraph, exempt such income or capital from tax.

(b) Where a resident of Luxembourg derives items of income which, in accordance with the provisions of Articles X, XII, XIII A and paragraph (2) of Article XVIII, may be taxed in the United Kingdom, Luxembourg shall, subject to the provisions of sub-paragraph *(c)* of this paragraph, allow as a deduction from the tax on the income of that resident an amount equal to the tax paid in respect of such items of income in the United Kingdom. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such items of income derived from the United Kingdom.

Where, in the case of a dividend to which the provisions of sub-paragraph *(c)* of paragraph (3) of Article X apply, the company receiving the dividend is outside the scope of sub-paragraph *(c)* of this paragraph, then the difference between the tax credit referred to in sub-paragraph *(b)* of paragraph (3) of Article X and the tax credit referred to in sub-paragraph *(c)* of paragraph (3) of Article X shall be assimilated, for the purposes of the preceding sentence, to United Kingdom tax, but the total of this difference and the tax charged in the United Kingdom in accordance with the provisions of sub-paragraph *(a)* (ii) of paragraph (3) of Article X shall not exceed the amount of tax referred to in sub-paragraph *(b)* of paragraph (2) of Article X.

(c) Where dividends paid by a company which is a resident of the United Kingdom to a company which is a resident of Luxembourg are exempt from Luxembourg tax in accordance with Luxembourg law, the tax deducted in the United Kingdom on such dividends shall not be credited against Luxembourg tax.

(d) Where in accordance with any provision of this Convention income derived and capital owned by a resident of Luxembourg is exempt from tax in Luxembourg, that State may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital."

ARTICLE 9

Each of the Contracting Parties shall notify to the other the completion of the procedures 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 have effect:

(a) in the United Kingdom:

(i) in relation to paragraph (3) of Article X to dividends paid on or after the date of its entry into force; and

(ii) in relation to all other provisions of this Protocol, for any year of assessment, financial year or chargeable period beginning on or after 1 January 1984;

(b) in Luxembourg:

(i) in respect of taxes withheld at source, to income derived on or after 1 January 1984; and

(ii) in respect of other taxes, to taxes chargeable for any taxable years beginning on or after 1 January 1984.

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

Done in duplicate at London, this 28th day of January 1983 in the English and French languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:	For the Grand Duchy of Luxembourg
Belstead	*Roger Hastert*

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) (Luxembourg) Order 1968 as amended by the Protocol signed on 18 July 1978.

It amends the Dividends Article by removing the entitlement to a tax credit in respect of a United Kingdom company dividend unless the recipient shows (if required to do so by the United Kingdom competent authority) that the shares were acquired for bona fide commercial reasons or in the ordinary course of making and managing investments and it was not the main object nor one of the main objects of that acquisition to obtain entitlement to the tax credit.

It also makes provisions for gains from the disposal of shares deriving their value from interests in United Kingdom oil and gas licences to be taxed in the United Kingdom and amends the interest, royalties, pensions, other income and credit Articles to give relief to the beneficial owner of the income to replace the former "subject to tax" rule.

The Protocol is expressed to take effect in the United Kingdom in relation to dividends paid on or after the date of its entry into force and in relation to all other provisions for any year of assessment, financial year or chargeable period beginning on or after 1 January 1984.

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