

1971 No. 874

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(Federal Republic of Germany) Order 1971***Laid before the House of Commons in draft**Made* - - - - - *25th May 1971*

At the Court at Buckingham Palace, the 25th day of May 1971

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament 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, and section 39 of the Finance Act 1965(b), 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) (Federal Republic of Germany) Order 1971.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in the Schedule to this Order have been made with the Government of the Federal Republic of Germany 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 Federal Republic of Germany varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Federal Republic of Germany) Order 1967(c); and

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

N. E. Leigh.

(a) 1970 c. 10.
(c) S.I. 1967/25 (1967 I, p. 55).

(b) 1965 c. 25.

SCHEDULE

PROTOCOL AMENDING THE COVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION, SIGNED AT BONN ON THE 26th NOVEMBER, 1964

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany;

Desiring to conclude a Protocol to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion, signed at Bonn on the 26th November, 1964 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

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

"Article I

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

(a) in the Federal Republic of Germany:

the *Einkommensteuer* (income tax) including the *Ergänzungsabgabe* (surcharge) thereon,

the *Körperschaftsteuer* (corporation tax) including the *Ergänzungsabgabe* (surcharge) thereon,

the *Vermögensteuer* (capital tax), and

the *Gewerbesteuer* (trade tax)

(hereinafter referred to as "Federal Republic tax");

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

the income tax (including surtax),

the corporation tax, and

the capital gains tax

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

(2) The present Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting Party after the date of signature of the present Convention in addition to, or in place of, the existing taxes."

ARTICLE 2

Sub-paragraphs (a) and (b) of paragraph (1) of Article II of the Convention shall be deleted and replaced by the following:

"(a) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(b) the term "the Federal Republic", when used in a geographical sense, means the territory in which the Basic Law for the Federal Republic of Germany is in force, as well as any area adjacent to the territorial waters of the Federal Republic of Germany designated, in accordance with international law as related to the rights which the Federal Republic of Germany may exercise with respect to the sea bed and sub-soil and their natural resources, as domestic area for tax purposes;"

ARTICLE 3

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

“(2) Where under any provision of this Convention income from a source in one of the territories is relieved from tax in that territory if it is subject to tax in the other territory, and, under the law in force in that other territory, the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned territory shall apply only to so much of the income as is remitted to or received in the other territory.”

ARTICLE 4

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

“(1) Dividends paid by a company resident in one of the territories to a resident of the other territory may also be taxed in the former territory. Tax shall not, however, be charged in that former territory at a rate in excess of 15 per cent on the gross amount of such dividends provided that those dividends either are subject to tax in the other territory or, being dividends paid by a company which is resident in the United Kingdom, are exempt from Federal Republic tax under the provisions of sub-paragraph (a) of paragraph (2) of Article XVIII.”

(2) Paragraph (4) of Article VI of the Convention shall be deleted and replaced by the following:

“(4) The term “dividends” as used in this Article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders’ 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; in the case of the United Kingdom, the term includes any item (other than interest or royalties exempt from United Kingdom tax under the provisions of Article VII of this Convention) which under the law of the United Kingdom is treated as a distribution of a company; in the case of the Federal Republic the term includes income arising from participation in the capital and profits of a company resident in the Federal Republic, and the income derived by a sleeping partner from his participation as such.”

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

“(6) If the recipient of dividends is a company and if those dividends are exempt from tax in the territory of which that company is a resident, the provisions of the second sentence of paragraph (1) and the provisions of paragraph (2) of this Article shall not apply to the dividends to the extent that they can have been paid only out of income which accrued to the company paying the dividends in a period ending twelve months or more before the said recipient acquired the shares in respect of which the dividends are paid. Provided that this paragraph shall not apply if the shares were not acquired primarily for the purpose of securing the benefit of this Article.”

ARTICLE 5

The following new paragraph shall be added at the end of Article VII of the Convention:

“(6) Any provision in the law of either of the territories which relates only to interest paid to a non-resident company or only to royalties so paid shall not operate so as to require interest or royalties paid to a company which is a resident of the other territory to be left out of account as a deduction in computing the taxable profits of the company paying the interest or royalties, unless the debt-claim in respect of which the interest is paid, or the right or property giving rise to the royalties, as the case may be, was created or assigned mainly for the purpose of taking advantage of this paragraph and not for bona fide commercial reasons.”

ARTICLE 6

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

“Article VIII

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article XII, may be taxed in the territory in which such property is situated.

(2) Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the territories has in the other territory or of movable property pertaining to a fixed base available to a resident of one of the territories in the other territory for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other territory. However, gains from the alienation of movable property of the kind referred to in paragraph (3) of Article XVI shall be taxable only in the territory in which such movable property is taxable according to the said Article.

(3) Capital gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) of this Article, shall be taxable only in the territory of which the alienator is a resident. Provided that this paragraph shall not affect the liability to United Kingdom tax on such gains of individuals who remain ordinarily resident in the United Kingdom and who are not subject to tax in the Federal Republic in respect of those gains.”

ARTICLE 7

Paragraph (3) of Article XII of the Convention shall be deleted and replaced by the following:

“(3) The provisions of paragraphs (1) and (2) of this Article shall apply to income derived from the direct use or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises.”

ARTICLE 8

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

“Article XVII

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the Federal Republic shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Federal Republic tax as German nationals not resident in the Federal Republic.

(3) Nothing in this Convention shall entitle an individual who is a resident of one of the territories and whose income from the other territory consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purposes of taxation in that other territory.”

ARTICLE 9

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

“Article XVIII

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Federal Republic tax payable under the laws of the Federal Republic and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the Federal Republic (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Federal Republic tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of the Federal Republic to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 25 per cent of the voting power in the Federal Republic company, the credit shall take into account (in addition to any Federal Republic tax creditable under the provisions of sub-paragraph (a) of this paragraph) the Federal Republic tax payable by the company in respect of the profits out of which such dividend is paid.

For the purposes of this paragraph the term “Federal Republic tax” shall not include *Gewerbesteuer* (trade tax) computed on a basis other than profits or *Vermögensteuer* (capital tax).

(2) Tax shall be determined in the case of a resident of the Federal Republic as follows:

- (a) Unless the provisions of sub-paragraph (b) below apply, there shall be excluded from the basis upon which Federal Republic tax is imposed any item of income from sources within the United Kingdom and any item of capital situated within the United Kingdom which, according to this Convention, may be taxed in the United Kingdom provided that capital gains referred to in paragraph (1) of Article VIII shall be so excluded only if they are subject to tax in the United Kingdom. The Federal Republic, however, retains the right to take into account in the determination of its rate of tax the items of income and capital so excluded. The first sentence of this sub-paragraph shall in the case of income from dividends apply only to such dividends as are paid to a company limited by shares (*Kapitalgesellschaft*) being a resident of the Federal Republic by a company limited by shares being a resident of the United Kingdom at least 25 per cent of the voting shares of which are owned by the first-mentioned company. There shall also be excluded from the basis upon which Federal Republic tax is imposed any participation the dividends on which are excluded, or if paid would be excluded, from the tax basis according to the foregoing sentence.
- (b) Subject to the provisions of German tax law regarding credit for foreign tax, there shall be allowed as a credit against Federal Republic tax on income payable in respect of the following items of income from sources within the United Kingdom:
 - (i) the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention on dividends not dealt with in sub-paragraph (a) above;
 - (ii) the United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention on remuneration and pensions within the meaning Article IX paid out of any fund established in the United Kingdom to an individual who is a German national without being also a national of the United Kingdom.

(3) For the purposes of this Article:

- (a) profits or remuneration arising from the exercise of a profession or employment in one of the territories shall be deemed to be income from sources within that territory;

- (b) the services of an individual whose services are wholly or mainly performed in ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory; and
- (c) any remuneration or pension within the meaning of paragraphs (1) or (2) of Article IX shall be deemed, notwithstanding the foregoing provisions of this paragraph, to be income from a source within the territory of the Contracting Party in whose territory the fund is established out of which the remuneration or pension is paid."

ARTICLE 10

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

"Article XVIII A

- (1) Where a resident of one of the territories considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those territories, present his case to the taxation authority of the territory of which he is a resident.
- (2) The taxation authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the taxation authority of the other territory, with a view to the avoidance of taxation not in accordance with the Convention.
- (3) The taxation authorities of the territories shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the application of the Convention.
- (4) Nothing in this Convention shall prevent tax in one of the territories from being deducted at source at the rates which would apply if this Convention were not in force. Where the income concerned is exempt from tax in such territory under the provisions of this Convention or where the amount of tax so deducted exceeds the amount of tax chargeable under the provisions of this Convention, the tax so deducted or the excess amount of tax shall be refunded upon application to be made by the recipient of such income to the tax office concerned. The refund shall be made if it is applied for within a period of three years from the day on which the income has been received or within such longer period as it permitted under the law in force in the territory concerned.
- (5) The taxation authorities of the territories may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs or for the purpose of applying the provisions of the Convention."

ARTICLE 11

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

"Article XIX

- (1) The taxation authorities of the territories shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with the assessment, collection, enforcement or prosecution in respect of taxes which are the subject of the Convention.
- (2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on the taxation authority of either territory the obligation:
 - (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in either territory;
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration in that or the other territory; or

- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.”

ARTICLE 12

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

“Article XXIV

This Convention shall continue in effect indefinitely but either Contracting Party may, on or before the thirtieth day of June in any calendar year, but not earlier than in the calendar year 1971, give, through diplomatic channels, notice of termination to the other Contracting Party and, in such event, this Convention shall cease to be effective:

(a) in the United Kingdom:

- (i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given; and
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(b) in the Federal Republic:

for any period of assessment following the year in which the notice is given.”

ARTICLE 13

This Protocol shall also apply to Land Berlin, provided that the Government of the Federal Republic of Germany has not made a contrary declaration to the Government of the United Kingdom within three months from the date of entry into force of this Protocol.

ARTICLE 14

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged at Bonn 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).

(3) Upon the entry into force of this Protocol it shall be regarded as an integral part of the Convention, and the competent authority in either territory may publish the text of the Convention as amended by this Protocol.

(4) Upon the entry into force of this Protocol, it shall have effect:

(a) in the United Kingdom:

- (i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April, 1969; and
- (ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1969;

(b) in the Federal Republic:

as respects Federal Republic taxes, which are levied for the assessment period 1969 and for subsequent periods.

(5) Where any greater relief from tax would have been afforded by any provision of the Convention, unamended, than is due under the Convention as amended by this Protocol, any such provision as aforesaid shall continue to have effect for any year of assessment or financial year or period of assessment beginning before the entry into force of this Protocol, provided that this paragraph shall not entitle a resident to the Federal Republic to a credit for a greater amount of United Kingdom tax than he is required to bear.

(a) Instruments of ratification were exchanged on 30th April 1971.

(6) Notwithstanding paragraph (5) of this Article where any greater relief from United Kingdom tax would have been afforded by paragraph (2) of Article XVIII of the Convention, unamended, in respect of dividends paid by a company which is a resident of the Federal Republic than is afforded by Article 9 of this Protocol, the aforesaid paragraph (2) of Article XVIII shall continue to have effect as respects United Kingdom tax for any year of assessment or any financial year beginning before the date of entry into force of this Protocol only in respect of dividends paid before the said date.

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

Done in duplicate at London this 23rd day of March 1970, in the English and German languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

G. M. THOMSON

For the Federal Republic of Germany:

K. G. V. HASE.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order extends the Convention with the Federal Republic of Germany signed on 26th November 1964 to United Kingdom corporation tax and capital gains tax, and makes certain other alterations to it, the more important of which are as follows.

The rate of United Kingdom tax on dividends flowing from the United Kingdom to the Federal Republic is normally not to exceed 15 per cent. In the case of a dividend paid by a German company, credit for the tax on the profits out of which the dividend is paid is to be given for United Kingdom tax purposes where the recipient of the dividend is a United Kingdom company which controls at least 25 per cent of the voting power in the paying company. There are new provisions for consultation and exchange of information between the taxation authorities of the two countries.

The Protocol is, in general, to take effect in the United Kingdom from April 1969.