

**1973 No. 1763****INCOME TAX****The Double Taxation Relief (Taxes on Income)  
(Italy) Order 1973***Laid before the House of Commons in draft**Made - - - 24th October 1973*

At the Court at Buckingham Palace, the 24th day of October 1973

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 347(6) of the Income Tax Act 1952(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 Income and Corporation Taxes Act 1970(b) and section 39 of the Finance Act 1965(c) as amended by paragraph 6(1) of Schedule 15 to the said 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) (Italy) Order 1973.

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 Italian Republic 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 Italy varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Italy) Order 1962(d); and

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

*W. G. Agnew.*

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(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (b) 1970 c. 10. (c) 1965 c. 25.  
(d) S.I. 1962/2787 (1962 III, p. 3986).

## SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 4TH JULY, 1960

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

Desiring to conclude a 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, signed at London on 4th July, 1960 (hereinafter referred to as "the Convention");

Have agreed as follows:

## ARTICLE 1

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

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

(a) in Italy (and hereinafter referred to as "Italian Tax"):

- (i) tax on land (*imposta sul reddito dei terreni*);
- (ii) tax on buildings (*imposta sul reddito dei fabbricati*);
- (iii) tax on income from movable wealth (*imposta sui redditi di ricchezza mobile*);
- (iv) tax on agricultural income (*imposta sui redditi agrari*);
- (v) complementary tax (*imposta complementare progressiva sul reddito*);
- (vi) tax on companies (*imposta sulle società*) in so far as the tax is charged on income and not on capital; and
- (vii) tax on profits distributed by companies (*imposta sugli utili distribuiti dalle società*);

(b) in the United Kingdom of Great Britain and Northern Ireland (and hereinafter referred to as "United Kingdom tax"):

the income tax (including surtax), the corporation tax, and the capital gains tax."

## ARTICLE 2

Sub-paragraphs (g), (h), and (i) of paragraph (1) of Article II of the Convention shall be deleted and replaced by the following:

"(g) For the purposes of this Convention the term "resident of one of the territories" means any person who, under the law of that territory, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. The terms "resident of the United Kingdom", "resident of Italy" and "resident of the other territory" shall be construed accordingly;

(h) Where by reason of the provisions of sub-paragraph (g) an individual is a resident of both territories, then his status shall be determined in accordance with the following rules:

- (i) he shall be deemed to be a resident of the territory in which he has a permanent home available to him. If he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (centre of vital interests);

- (ii) if the territory in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;
- (iii) if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;
- (iv) if he is a national of both territories or of neither of them, the taxation authorities (as defined in Article XVIII) shall settle the question by mutual agreement;
- (i) Where by reason of the provisions of sub-paragraph (g) a person other than an individual is a resident of both territories then it shall be deemed to be a resident of the territory in which its place of effective management is situated;"

#### ARTICLE 3

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

"(2) Where under the present 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

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

##### *"Article VII*

(1) Dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed in that other territory.

(2) Dividends paid by a company which is a resident of one of the territories to a resident of the other territory (who does not carry on a trade or business in the first-mentioned territory through a permanent establishment situated therein) may be taxed in the first-mentioned territory and according to the law of that territory but if the dividends are subject to tax in the other territory the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the recipient is a company which controls directly at least 51 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.

(3) 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 and also includes any other item of income (other than income exempt under this Convention) which, under the law of the territory of which the company paying the dividends is a resident, is treated as a distribution of a company.

(4) (a) If the recipient of dividends is a company which owns 25 per cent or more of the class of shares in respect of which the dividends are paid then

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 relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the recipient of the dividends became the owner of 25 per cent or more of the class of shares in question.

(b) Provided that sub-paragraph (a) of this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purposes of securing the benefit of this Article.

(c) Where sub-paragraph (a) of this paragraph applies, the tax charged on the dividends in the territory of which the company paying the dividends is a resident shall, if the dividends are subject to tax in the other territory, not exceed 30 per cent of the gross amount of the dividends.

(5) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived."

#### ARTICLE 5

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

##### *"Article X*

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer or exchange of capital assets if he is subject to tax in respect of those gains in the first-mentioned territory."

#### ARTICLE 6

Paragraphs (2), (3) and (4) of Article XVII of the Convention shall be deleted and replaced by the following:

"(2) 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) Italian tax payable under the laws of Italy and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Italy (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 Italian tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Italy to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the Italian company, the credit shall take into account (in addition to any Italian tax creditable under (a)) the Italian tax payable by the company in respect of the profits out of which such dividend is paid if, at the time when the dividend is paid, a company resident in Italy is exempt, in respect of any dividend paid by a company which is a resident of the United Kingdom, from the tax on income from movable wealth.

(3) In the case of a resident of Italy, Italy in determining its taxes specified in Article I of this Convention in the case of its residents or companies may, regardless of any other provision of this Convention, include in the basis upon which such taxes are imposed all items of income; Italy shall, however, deduct from the taxes so calculated the United Kingdom tax on those items (not exempt in the United Kingdom under this Convention) in the following manner:

(a) If the item of income is, according to the Italian law, subjected to the tax on income from movable wealth, the tax paid in the United Kingdom shall be deducted from the tax on income from movable wealth, but in an amount not exceeding that proportion of the aforesaid Italian tax which such item of income bears to the entire income.

Where the tax paid in the United Kingdom on such income is higher than the deduction so calculated the difference shall be deducted from the complementary tax or from the tax on companies, as the case may be, but in an amount not exceeding that proportion of such complementary or company tax which the item of income bears to the entire income;

(b) if the item of income is only subjected to the complementary tax or to the tax on companies, the deduction shall be granted from the complementary tax or from the tax on companies, as the case may be, but for that part of the tax paid in the United Kingdom which exceeds 20 per cent of such item of income. The deduction cannot however exceed that proportion of the complementary tax or of the tax on companies which such income bears to the entire income."

#### ARTICLE 7

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 Contracting Parties, present his case to the taxation authorities (as defined in Article XVIII) of the territory of which he is a resident. The claim must be lodged within two years from the date on which the tax was notified or withheld at the source whichever is the later.

(2) The taxation authorities shall endeavour, if the objection appears to them to be justified and they are not themselves able to arrive at an appropriate solution, to resolve the case by mutual agreement with the taxation authorities 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 interpretation or application of the Convention.

(4) 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."

#### ARTICLE 8

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

##### *"Article XXIII*

This Convention shall continue in effect indefinitely but either Contracting Party may, on or before the thirtieth day of June in any calendar year after

the year 1970 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;
- (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 Italy:

as respects Italian taxes for the taxable years beginning on or after the 1st January in the calendar year next following that in which such notice is given."

#### ARTICLE 9

(1) This Protocol, which shall form an integral part of the Convention signed at London on 4th July, 1960, shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

(2) This Protocol shall enter into force after the expiration of a month following the date on which the instruments of ratification are exchanged<sup>(a)</sup> and shall thereupon have effect:

(a) in the United Kingdom:

- (i) in respect of income tax (including surtax) for any year of assessment beginning on or after 6th April, 1967;
- (ii) in respect of capital gains tax for any year of assessment beginning on or after 6th April, 1967;
- (iii) in respect of corporation tax for any financial year beginning on or after 1st April, 1967;

(b) in Italy:

as respects Italian taxes for the taxable years beginning on or after the 1st January, 1967.

(3) Where any greater relief from tax would have been afforded by any provision of the Convention signed at London on 4th July, 1960, unamended, than is due under the Convention as amended by this Protocol, any such provision as aforesaid shall continue to have effect in respect of dividends paid or capital gains realised before the date of entry into force of this Protocol.

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

Done in duplicate at London, this 28th day of April, 1969, in the English and Italian languages, both texts being equally authoritative.

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

MICHAEL STEWART.

For the Government of the Italian Republic:

PIETRO NENNI.

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(a) Instruments of ratification were exchanged on 4th October, 1973.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

The Protocol scheduled to this Order was signed on 28th April, 1969 and makes certain alterations to the Double Taxation Convention with Italy signed on 4th July, 1960.

The Protocol provides that the rate of tax in the source country on dividends flowing from one country to the other is normally not to exceed 15 per cent in the case of portfolio investment and 5 per cent in the case of direct investment. In the case of a dividend paid by an Italian company, credit for the tax on the profits out of which the dividend is paid is, while certain provisions of Italian law are in force, to be given for United Kingdom tax purposes where the recipient of the dividend is a United Kingdom company which controls at least 10 per cent of the voting power in the paying company. The Protocol also extends the Convention to include capital gains tax. There are provisions for consultation between the taxation authorities of the two countries.

The Protocol is, in general, to take effect in the United Kingdom from April 1967 but there is provision for the changes made by the Protocol not to operate retrospectively to the detriment of taxpayers. The Protocol does *not* take account of the introduction of the new corporation tax system in the United Kingdom which, so far as it relates to the tax treatment of dividends paid by a United Kingdom company to an overseas shareholder, came into operation on 6th April, 1973.

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