

## STATUTORY INSTRUMENTS

1973 No. 2098

## INCOME TAX

**The Double Taxation Relief (Taxes on Income) (Brunei)  
Order 1973***Laid before the House of Commons in draft**Made - - - - 12th December 1973*

At the Court at Buckingham Palace, the 12th day of December 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 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, as amended by section 98(2) of the Finance Act 1972(b), 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) (Brunei) Order 1973.

2. It is hereby declared—

(a) that the arrangements specified in the Supplementary Arrangement 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) (Brunei) Order 1950(c), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Brunei) Order 1968(d), have been made with the Government of Brunei 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 Brunei; and

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

*W. G. Agnew.*

(a) 1970 c. 10.

(c) S.I. 1950/1977 (1950 I, p. 1004).

(b) 1972 c. 41.

(d) S.I. 1968/306 (1968 I, p. 929).

## SCHEDULE

## SUPPLEMENTARY ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF BRUNEI TO AMEND THE EXISTING ARRANGEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

1. The Arrangement made in 1950 between His Majesty's Government and the Government of Brunei as amended by the Arrangement made in 1968 between Her Majesty's Government and the Government of Brunei for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income (hereinafter referred to as "the existing Arrangement") shall be amended by the deletion of paragraph 6 and the substitution of the following—

"6.—(1) (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Brunei may be taxed in Brunei.

(b) Where a resident of Brunei is entitled to a tax credit in respect of such a dividend under sub-paragraph (2) 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.

(c) Except as aforesaid dividends paid by a company which is a resident of the United Kingdom to a resident of Brunei who is subject to tax in Brunei on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Brunei who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of subparagraph (3) of this paragraph and provided he is subject to tax in Brunei on the dividends, 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 those dividends, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.

(3) Sub-paragraph (2) of this paragraph shall not apply where the recipient 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. 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.

(4) Dividends paid by a company resident in Brunei to a resident of the United Kingdom may be taxed in the United Kingdom. If the recipient of the dividends is subject to tax in the United Kingdom in respect thereof they shall be exempt from any tax in Brunei which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(5) The term "dividends" as used in this paragraph 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 royalties exempt from tax under the provisions of paragraph 7 of this Arrangement) 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.

(6) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then sub-paragraphs (1) and (2) or as the case may be sub-paragraph (4) of this paragraph shall not apply to the dividend to the extent that it can have been paid only 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 sub-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 sub-paragraph shall not apply if the beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this paragraph.

(7) The provisions of sub-paragraphs (1) and (2) or as the case may be sub-paragraph (4) of this paragraph shall not apply where a resident of one of the territories has in the other territory 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.

(8) 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."

2. This Supplementary Arrangement shall enter into force when the last of all such things shall have been done in the United Kingdom and Brunei as are necessary to give the Supplementary Arrangement the force of law in the United Kingdom and Brunei respectively, and the new paragraph 6 of the Arrangement shall thereupon have effect in relation to dividends paid on or after 6th April 1973.

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#### EXPLANATORY NOTE

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

The Supplementary Arrangement scheduled to this Order makes certain alterations to the Arrangement made in 1950 with Brunei, as amended by the Arrangement made on 4th March 1968. 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 an overseas shareholder, came into operation on 6th April 1973. The Supplementary Arrangement provides that where a United Kingdom company pays a dividend to a resident of Brunei other than a company which controls 10 per cent or more of the voting power in the paying company, the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled, less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. Dividends paid by a Brunei company to a resident of the United Kingdom will continue to be exempt from any tax in Brunei which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

The Supplementary Arrangement is expressed to take effect in relation to dividends paid on or after 6th April 1973.

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