

1979 No. 117

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(Austria) Order 1979**

Laid before the House of Commons in draft

Made - - - - 6th February 1979

At the Court at Buckingham Palace, the 6th day of February 1979

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 said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972(b) and section 39 of the Finance Act 1965(c), 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) (Austria) Order 1979.
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 Republic of Austria 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 Austria; and
 - (b) that it is expedient that these arrangements should have effect.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1970 c. 10.

(b) 1972 c. 41.

(c) 1965 c. 25.

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE
UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION
AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO
TAXES ON INCOME, SIGNED AT LONDON ON 30TH APRIL, 1969

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

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 30th April, 1969 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Article 10 of the Convention shall be deleted and replaced by the following:

"ARTICLE 10

(1) Dividends derived from a company which is a resident of Austria by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Austria, and according to the laws of Austria, but provided that the beneficial owner of the dividends is a resident of the United Kingdom 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 which 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.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Austria may be taxed in Austria. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but provided that the beneficial owner of the dividends is a resident of Austria 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 which 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.

(3) Notwithstanding the provision of sub-paragraph (a) of paragraph (1) of this Article, as long as the Austrian rate of corporation tax on distributed profits is lower than the rate on undistributed profits and the difference between the two rates exceeds, at the highest taxation level, 10 percentage points, the tax charged on dividends to which that sub-paragraph applies shall not exceed 10 per cent of the gross amount of the dividends.

(4) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

- (a) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Austria may be taxed in Austria.
- (ii) Where a resident of Austria 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.
- (iii) Except as provided in sub-paragraph (a) (ii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom by

a resident of Austria 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 Austria who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) 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 such 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. 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.

(5) 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 State of which the company making the distribution is a resident and also includes any other item (other than interest or royalties relieved from tax under the provisions of Article 11 or Article 12 of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(6) The preceding paragraphs shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(7) The provisions of paragraphs (1), (2), (3) and (4) of this Article shall not apply if the beneficial owner of the dividends, being a resident of one of the Contracting States, carries on a trade or business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with that permanent establishment. In such a case the provisions of Article 7 shall apply.

(8) If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividend is paid, then paragraphs (1), (2), (3) and (4) of this Article 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 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 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 Article.

(9) Where a company which is a resident of a Contracting State derives profits or income from sources within the other Contracting State that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State."

ARTICLE II

(1) This Protocol shall be ratified and the instruments of ratification shall be exchanged at Vienna as soon as possible.

(2) This Protocol shall enter into force 60 days after the exchange of instruments of ratification and shall thereupon have effect in relation to dividends paid on or after 6 April 1973.

ARTICLE III

Notwithstanding the provisions of Article 23 of the Convention, where, before the entry into force of this Protocol, tax has been deducted at the source from dividends in excess of the amount of tax chargeable in accordance with the provisions of this Protocol the excess amount of tax shall be refunded upon application being made to the competent authority concerned within three years at the end of the calendar year in which this Protocol enters into force.

ARTICLE IV

This Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at London this 17th day of November 1977 in the English and German languages, both texts being equally authoritative.

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

FRANK JUDD.

For the Republic of Austria:

KURT ENDERL.

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) (Austria) Order 1970 (S.I. 1970/1947). These alterations follow mainly 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 United Kingdom companies to overseas shareholders, came into operation on 6th April 1973.

The Protocol states as a general rule that the rate of tax on dividends flowing from one country to the other is normally not to exceed 5% where the dividend is paid to a company which controls, directly or indirectly, at least 25% of the voting power in the company paying the dividend and it is not to exceed 15% in all other cases. The Protocol then makes specific provision for dividends paid by a United Kingdom company to a resident of Austria as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom. It prescribes that where a United Kingdom company pays a dividend to a resident of Austria, other than to a company which controls, directly or indirectly, at least 10% of the voting power in the paying company, the recipient will be entitled to the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would have been entitled, less income tax at a rate not exceeding 15% on the aggregate of the dividend and the tax credit.

The Protocol also provides that the rate of Austrian withholding tax on dividends paid to a United Kingdom company controlling at least 25% of the voting power in the paying company shall not exceed 10%, as long as the Austrian rate of corporation tax on distributed profits is lower by more than 10 percentage points at the highest taxation level than the tax on undistributed profits.

The Protocol is to have effect in relation to dividends paid on or after 6th April 1973.

SI 1979/117
ISBN 0-11-093117-3



780110 931173