1979 No. 303

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Norway) (No. 2) Order 1979

Laid before the House of Commons in draft

Made - - - - *14th March* 1979

At the Court at Buckingham Palace, the 14th day of March 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, as amended by section 98 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) (Norway) (No. 2) Order 1979.

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) (Norway) Order 1970(**c**) have been made with the Government of the Kingdom of Norway 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 Norway; and

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

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

(**a**) 1970 c. 10. (**b**) 1972 c. 41. (**c**) S.I. 1970/154.

SCHEDULE

PROTOCOL BETWEEN THE GOVERNMENT OF THE KINGDOM OF NORWAY AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED IN LONDON ON 22 JANUARY 1969.

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

Desiring to conclude a Protocol to amend the Convention between the Contracting States for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital, signed in London on 22 January 1969 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Article 2 of the Convention shall be deleted and replaced by the following:

"ARTICLE 2

Taxes covered

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

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

(i) the income tax;

(ii) the corporation tax;

(iii) the petroleum revenue tax; and

(iv) the capital gains tax;

(*b*) in Norway:

(i) the national, county municipal and municipal taxes on income, including the special national tax on income from production and pipeline transport of petroleum;

(ii) the national and municipal taxes on capital;

(iii) the national dues on the profits of non-resident artistes; and

(iv) the seamen's tax.

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

(3) The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws."

ARTICLE II

Article 11 of the Convention shall be deleted and replaced by the following:

"ARTICLE 11

Dividends

(1) Dividends derived from a company which is a resident of Norway by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Norway but, subject to the provisions of paragraph (2) of this Article, where such dividends are beneficially owned by 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 10 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) Notwithstanding the provisions of paragraph (1) of this Article dividends derived from a company which is a resident of Norway by a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company may be taxed in Norway at a rate not exceeding 10 per cent as long as all dividends paid by Norwegian companies are allowed as deductions from their profits for the purpose of computing their liability to Norwegian state tax.

(3) Dividends derived from a company which is a resident of the United Kingdom by a resident of Norway may be taxed in Norway. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but where such dividends are beneficially owned by a resident of Norway 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 10 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.

(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 (3) of this Article:

(*a*) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Norway may be taxed in Norway.

(ii) Where a resident of Norway 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) Where a resident of Norway 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.

(iv) Except as provided in sub-paragraphs (*a*) (ii) and (*a*) (iii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Norway shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(*b*) A resident of Norway who receives dividends 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 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 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 dividends 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 dividends. In these circumstances a company which is a resident of Norway and receives dividends from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividends, 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 those dividends, and to the payment of any excess of that tax credit over its liability to United Kingdom tax. For the purpose of this paragraph two companies shall be deemed to be associated if one controls directly or indirectly more than 50 per cent of the voting power in the other company, or a third company controls more than 50 per cent of the voting power in both of them.

(5) 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 Norwegian tax purposes includes any item which under the law of Norway is treated as a distribution.

(6) 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) and (2), or as the case may be paragraphs (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 12 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 purposes of securing the benefit of this Article.

(7) The provisions of paragraphs (1) and (2), or as the case may be paragraphs (3) and (4), of this Article shall not apply where the beneficial owner of the dividends, being a resident of one of the Contracting States, has in the

other Contracting State 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 8 shall apply.

(8) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company and beneficially owned by persons who are not residents of the other State, 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 or a fixed base situated in 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 that other State."

ARTICLE III

Paragraphs (2), (4) and (6) of Article 12 of the Convention shall be deleted and replaced by the following:

"(2) The term "interest" for United Kingdom tax purposes includes any item which under the law of the United Kingdom is treated as interest and for Norwegian tax purposes includes any item which under the law of Norway is treated as interest, but, subject to the provisions of paragraph (4) of this Article, shall not include any item which is treated as a dividend under the provisions of Article II."

"(4) Any provision in the law of either Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be treated as a distribution or dividend by the company paying such interest. The preceding sentence shall not apply to interest paid to a company of one Contracting State in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons who are residents of the other Contracting State."

"(6) Where, owing to a special relationship between the payer and the recipient or between both of them and some other person the amount of the interest paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention."

ARTICLE IV

Paragraph (5) of Article 13 of the Convention shall be deleted and replaced by the following:

"(5) Where, owing to a special relationship between the payer and some other person, the amount of the royalties paid exceeds for whatever reason the amount which would have been paid in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State; due regard being had to the other provisions of the Convention."

ARTICLE V

Article 22 of the Convention shall be deleted and replaced by the following:

"ARTICLE 22

Teachers

A professor or teacher who visits a Contracting State for the purpose of teaching at a university, college, school or other educational institution in that Contracting State, whose visit does not exceed two years and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching."

ARTICLE VI

Article 26 of the Convention shall be deleted and replaced by the following:

"ARTICLE 26

Elimination of double taxation

(1) Credit method—United Kingdom

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*) Norwegian tax payable under the laws of Norway and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Norway (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 Norwegian tax is computed;

(*b*) in the case of a dividend paid by a company which is a resident of Norway to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Norwegian tax creditable under the provisions of sub-paragraph (*a*) of this paragraph) the Norwegian tax payable by the company in respect of the profits out of which such dividend is paid.

(2) Exemption method—Norway

(*a*) Where a resident of Norway derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Norway shall, subject to the provisions of sub-paragraph (*b*) of this paragraph, exempt such income or capital from tax but may, in calculating tax on the remaining income or capital of that person, apply the rate of tax which would have been applicable if the exempted income or capital had not been so exempted.

(*b*) Where a resident of Norway derives income which, in accordance with the provisions of Article 11 may be taxed in the United Kingdom, Norway shall allow as a deduction from the tax on the income of that person an amount equal to the tax paid in the United Kingdom. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is appropriate to the income derived from the United Kingdom.

(*c*) Notwithstanding the provisions of sub-paragraph (*b*) of this paragraph dividends paid by a company which is a resident of the United Kingdom to a company being a resident of Norway which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends shall be exempt from Norwegian tax to the extent that in accordance with the laws of Norway the dividends would be exempt from tax if both companies had been residents of Norway.

(3) For the purposes of paragraph (1) of this Article income, profits and capital gains owned by a resident of the United Kingdom which may be taxed in Norway in accordance with this Convention shall be deemed to arise from sources in Norway.

(4) Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both the enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph (1) or paragraph (2) of this Article."

Article VII

Paragraph (2) of Article 28 of the Convention shall be deleted and replaced by the following:

"(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities. This paragraph shall not be construed as preventing Norway from taxing the total profits attributable to a permanent establishment maintained in Norway by a company which is a resident of the United Kingdom at a rate at which the undistributed profits of a Norwegian company may be taxed."

Article VIII

(1) Each of the Contracting States shall notify to the other the completion of the procedure 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 thereupon have effect:

(*a*) in the United Kingdom:

(i) for any chargeable period beginning on or after 1 January 1973, and

(ii) in relation to any dividends, to which sub-paragraph (4) (*a*) (ii) of Article 11 (Dividends) in Article II applies, paid on or after 6 April 1973 and in relation to any dividends, to which sub-paragraph (4) (*a*) (iii) of Article 11 (Dividends) in Article II applies paid on or after 6 April 1975;

(*b*) in Norway:

(i) as respects any year of income beginning on or after 1 January 1973 (including accounting periods closed in any such year).

(ii) in relation to dividends paid on or after 1 January 1973.

(2) Where any provision of the Convention before amendment by this Protocol would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect:

(*a*) in the United Kingdom, for any year of assessment or financial year; and

(*b*) in Norway, for any year of income including an accounting period

beginning, in either case, before the entry into force of this Protocol.

ARTICLE IX

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

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

Done in duplicate at London this 23rd day of June 1977, in the Norwegian and English languages, both texts being equally authoritative.

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

FRANK JUDD.

For the Government of the Kingdom of Norway.

FRITHJOF JACOBSEN.

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) (Norway) Order 1970. 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 6 April 1973.

Where a United Kingdom company pays a dividend to a Norwegian company controlling 10 per cent or more of its voting power, the Norwegian company receiving the dividend will be entitled to a tax credit equal to one half of the tax credit which would be payable to a United Kingdom resident individual less a sum of not more than 5 per cent of the aggregate amount of the dividend and the tax credit paid. Where the recipient is an individual resident of Norway or a Norwegian company controlling less than 10 per cent of the voting power of the United Kingdom company, the tax credit payable will be equal to the tax credit which would be payable to a United Kingdom resident individual less a sum not exceeding 15 per cent of the aggregate of the dividend and the tax credit.

The Protocol also provides that the rate of Norwegian withholding tax on dividends paid to a United Kingdom company controlling at least 10 per cent of the voting power of the Norwegian company paying the dividend will be limited to a maximum of 10 per cent. However this 10 per cent rate applies only as long as all dividends paid by Norwegian companies are allowed as deductions from their profits for the purpose of computing their liability to Norwegian State tax; if and when such deductions for dividends are not so allowed, the rate of Norwegian tax in this circumstance is not to exceed 5 per cent. In all other cases the Norwegian withholding tax will not be more than 15 per cent.

The Protocol also amends the list of taxes covered by the Convention and removes from the definition of interest any item of interest which is treated in the United Kingdom or Norway as a dividend. The provisions in the Interest and Royalties Articles designed to prevent tax avoidance by means of the payment of excessive amounts of interest or royalties have been strengthened. Also, the Teachers Article no longer contains a subject-to-tax test, and the Elimination of double taxation Article now includes a proviso which ensures that the exemption granted by Norway for trade dividends flowing from the United Kingdom will only apply to the extent that the dividends would be exempt from tax under Norwegian law if both companies had been Norwegian. The Non-discrimination Article has been amended to make clear that Norway has the right to tax the profits of a permanent establishment in Norway at the same rate as the undistributed profits of a Norwegian company.

The Protocol is, in general, to take effect in the United Kingdom for the tax year or chargeable period, as appropriate, beginning in 1973 and for subsequent years and chargeable periods; however the provisions relating to dividends paid by a United Kingdom company to a Norwegian company which controls at least 10 per cent of the voting power in the paying company are to take effect only in respect of dividends paid on or after 6 April 1975.

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