STATUTORY INSTRUMENTS

1980 No. 567

INCOME TAX

The Double Taxation Relief (Taxes On Income) (Luxembourg) Order 1980

Laid before the House of Commons in draft

Made - - - - 21st April 1980

At the Court at Windsor Castle, the 21st day of April 1980

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(**1**), 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 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) (Luxembourg) Order 1980.

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) (Luxembourg) Order 1968, have been made with the Government of the Grand Duchy of Luxembourg with a view to affording relief from double taxation in relation to income tax, corporation tax, petroleum revenue tax, development land tax or capital gains tax and taxes of a similar character imposed by the laws of Luxembourg; and

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

(**1**) Section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).

N.E. Leigh
Clerk of the Privy Council

SCHEDULE

"PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GRAND DUCHY OF LUXEMBOURG FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL, SIGNED AT LONDON ON 24TH MAY 1967

The United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg;

Desiring to conclude a Protocol to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and the Grand Duchy of Luxembourg for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital, signed at London on 24th May 1967 (hereinafter referred to as "the Convention");

Have agreed as follows:

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

"(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;

(iv) the development land tax; and

(v) the capital gains tax

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

(b) In Luxembourg:

(i) the income tax on individuals (l'impôt sur le revenu des personnes physiques);

(ii) the tax on fees of directors of companies (l'impôt sur les tantièmes);

(iii) the corporation tax (l'impôt sur le revenu des collectivités);

(iv) the capital tax (l'impôt sur la fortune); and

(v) the communal trade tax, including tax on the total amount of wages and salaries (l'impôt commercial communal, y compris l'impôt sur le total des salaires)

(hereinafter referred to as "Luxembourg tax")."

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

"**ARTICLE X.**—(1) Dividends derived from a company which is a resident of one of the States by a resident of the other State may be taxed in that other State.

(2) However, such dividends may be taxed in the State of which the company paying the dividends is a resident, and according to the law of that State, but where such dividends are received by a resident of the other State who is subject to tax there in respect thereof the tax so charged shall not exceed:

(a) 5 per cent. of the gross amount of the dividends if the recipient is a company the capital of which is wholly or partly divided into shares and it 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.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) As long as an individual resident in the United Kingdom is entitled under United Kingdom law to a tax credit in respect of dividends paid by a company which is resident in the United Kingdom, paragraph (2) of this Article shall not apply to dividends derived from a company which is a resident of the United Kingdom by a resident of Luxembourg. In these circumstances the following provisions of this paragraph shall apply:

(a) (i) Where a resident of Luxembourg 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.

(ii) Where a resident of Luxembourg 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.

(iii) Except as provided in sub-paragraphs (a)(i) and (a)(ii) of this paragraph dividends derived from a company which is a resident of the United Kingdom and which are received by a resident of Luxembourg who is subject to tax in respect thereof shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(b) A resident of Luxembourg 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 subject to tax in Luxembourg 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 tax in the United Kingdom.

(c) The provisions of sub-paragraph (b) 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 10 per cent. or more of the voting power in the company paying the dividend. In these circumstances a company which is a resident of Luxembourg and receives dividends from a company which is a resident of the United Kingdom shall, provided it is subject to tax in Luxembourg on 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 tax in the United Kingdom. For the purposes of this sub-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.

(4) 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 Luxembourg tax purposes includes any item which under the law of Luxembourg is treated as a distribution out of earnings and profits, and the income derived by a sleeping partner from his participation as such.

(5) The provisions of paragraph (1) and of paragraph (2) or (3), as the case may be, shall not apply if the recipient of the dividends, being a resident of one of the States, has in the other State, of which the company paying the dividends is a resident, 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 VII shall apply.

(6) The condition in paragraph (3)(c) that the recipient of the dividends shall be subject to tax in Luxembourg shall not apply in relation to dividends exempt from Luxembourg tax under the provisions of sub-paragraph (c) of paragraph (2) of Article XXV.

(7) Where a company which is a resident of one of the States derives profits or income from the other State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of 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 such other State, except 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."

ARTICLE 3. Paragraph (2) of Article XXV shall be deleted and replaced by the following:

(a) "(2) Where a resident of Luxembourg derives income or owns capital which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Luxembourg shall, subject to the provisions of sub-paragraph (b) of this paragraph, exempt such income or capital from tax but may, in calculating the 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) Subject to the provisions of sub-paragraph (c) of this paragraph tax which is charged in the United Kingdom, in accordance with the provisions of Article X and Article XII, on dividends and royalties received by a resident of Luxembourg shall be deducted from the amount of Luxembourg tax payable in respect of such dividends and royalties but the amount of the deduction shall not exceed the portion of Luxembourg tax, calculated before the deduction, corresponding to the same income.

Where, in the case of a dividend to which the provisions of sub-paragraph (c) of paragraph (3) of Article X apply, the company receiving the dividend is outside the scope of sub-paragraph (c) of this paragraph, then the difference between the tax credit referred to in sub-paragraph (b) of paragraph (3) of Article X and the tax credit referred to in sub-paragraph (c) of paragraph (3) of Article X shall be assimilated, for the purposes of the preceding sentence, to United Kingdom tax, but the total of this difference and the tax charged in the United Kingdom in accordance with the provisions of sub-paragraph (a)(ii) of paragraph (3) of Article X shall not exceed the amount of tax referred to in sub-paragraph (b) of paragraph (2) of Article X.

(c) Dividends paid by a company which is a resident of the United Kingdom to a company with share capital (société anonyme, société en commandite par actions, société à responsabilité limitée) which is a resident of Luxembourg shall be exempt from Luxembourg tax if the company receiving the dividends directly controls at least 25 per cent. of the voting rights in the company which is paying the dividends.

In this case, tax deducted in the United Kingdom on such dividends shall not be credited against Luxembourg tax."

ARTICLE 4. Each of the Contracting Parties shall notify to the other the completion of the procedures 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) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1st January 1975;

(ii) in respect of development land tax, for any realised development value accruing on or after 1st August 1976;

(iii) in relation to dividends paid on or after 6th April 1975;

(b) in Luxembourg:

(i) for taxable years and periods beginning on or after 1st January 1975; and

(ii) in relation to dividends paid on or after 6th April 1975.

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

Done in duplicate at London, this 18th day of July 1978, in the English and French languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

FRANK JUDD

For the Grant Duchy of Luxembourg:

ANDRÉ PHILIPPE"

EXPLANATORY NOTE

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) (Luxembourg) Order 1968. 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 provides rules for the taxation of dividends which are to apply 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.

Where a United Kingdom company pays a dividend to a Luxembourg company controlling 10 per cent. or more of its voting power, the Luxembourg 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 Luxembourg or a Luxembourg 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.

Certain consequential changes have been made to the provisions under which residents of Luxembourg receiving dividends from United Kingdom companies are given double taxation relief in Luxembourg. The Protocol also provides that the rate of Luxembourg withholding tax on dividends paid to a United Kingdom company controlling at least 25 per cent. of the voting power of the Luxembourg company paying the dividend will be limited to a maximum of 5 per cent. In all other cases the Luxembourg withholding tax will be not more than 15 per cent.

The Protocol is expressed to take effect in the United Kingdom in relation to dividends paid on or after 6th April 1975. The list of taxes covered by the Convention is revised to include explicitly the petroleum revenue tax for chargeable periods beginning on or after 1st January 1975, and the Development Land Tax, for realised development value accruing on or after 1st August 1976.