STATUTORY INSTRUMENTS

1982 No. 714

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Switzerland) Order 1982

Laid before the House of Commons in draft

Made - - - - *18th May* 1982

At the Court at Buckingham Palace, the 18th day of May 1982

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 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) (Switzerland) Order 1982.

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) (Switzerland) Order 1978 (**b**) have been made with the Swiss Federal Council 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 Switzerland; and

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

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

(**a**) 1970 c. 10; 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).
(**b**) S.I. 1978/1408.

SCHEDULE

PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS CONFEDERATION AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 8 DECEMBER 1977

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council;

Desiring to conclude a Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation with respect to Taxes on Income signed at London on 8 December 1977 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Paragraph 3 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

"3. 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:

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

(ii) Where a resident of Switzerland 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 Switzerland 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 by a resident of Switzerland 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 Switzerland who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraphs (*c*) and (*d*) 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 that tax 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. In these circumstances a company which is a resident of Switzerland and receives a dividend from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividend and subject to the provisions of sub-paragraph (*d*) of this paragraph, 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 that dividend, and to the payment of any excess of that tax credit over its liability to United Kingdom tax. 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.

(*d*) (i) The provisions of neither sub-paragraph (*b*) nor sub-paragraph (*c*) of this paragraph shall apply unless the recipient of a dividend shows (if required to do so by the competent authority of the United Kingdom on receipt of a claim by the recipient to have the tax credit set against United Kingdom income tax chargeable on him or to have the excess of the credit over that income tax paid to him) that the shareholding in respect of which the dividend was paid was acquired by the recipient for *bona fide* commercial reasons or in the ordinary course of making or managing investments and it was not the main object nor one of the main objects of that acquisition to obtain entitlement to the tax credit referred to in sub-paragraph (*b*) or sub-paragraph (*c*), as the case may be.

(ii) Switzerland may, on or before 30 June in any calendar year, give the United Kingdom, through diplomatic channels, notice of termination of this sub-paragraph and, in such event, it shall cease to have effect in relation to dividends paid on or after 6 April in the calendar year next following that in which such notice is given."

ARTICLE II

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

(2) The Protocol shall enter into force upon the exchange of instruments of ratification (**a**) and shall have effect in relation to dividends paid on or after the date of its entry into force.

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

Done in duplicate at London this 5th day of March 1981 in the English and French languages, both texts being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland:	For the Swiss Federal Council:
IAN GILMOUR	CLAUDE CAILLAT

(**a**) Instruments of ratification were exchanged on 10 May 1982.

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) Switzerland Order 1978.

It amends the Dividends Article by removing the entitlement to a tax credit in respect of a United Kingdom company dividend unless it is shown by the recipient that the shares were acquired for *bona fide* commercial reasons or in the ordinary course of making and managing investments and it was not the main object nor one of the main objects of that acquisition to obtain entitlement to the tax credit.

The Protocol is to take effect in relation to dividends paid on or after the date that instruments of ratification are exchanged.

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