STATUTORY INSTRUMENTS

1987 No. 467

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Mauritius) Order 1987

Made - - - - 18th March 1987

At the Court at Buckingham Palace, the 18th day of March 1987

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) (Mauritius) Order 1987.

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) (Mauritius) Order 1981(**2**)have been made with the Government of Mauritius 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 Mauritius, and

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

(**1**) 1970 c. 10; section 497 was amended and extended by section 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14)

(**2**) S.I.1981/1121

G I de Deney
Clerk of the Privy Council

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MAURITIUS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT LONDON ON 11 FEBRUARY 1981

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

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital Gains, signed at London on 11 February 1981 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

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

"ARTICLE 10

Dividends

(a) (1) Dividends derived from a company which is a resident of the United Kingdom by a resident of Mauritius may be taxed in Mauritius.

(b) Where a resident of Mauritius is entitled to a tax credit in respect of such a dividend under paragraph (2) of this Article, 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 derived from a company which is a resident of the United Kingdom by a resident of Mauritius who is the beneficial owner of the dividends shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of Mauritius who receives a dividend from a company which is a resident of the United Kingdom shall,, subject to the provisions of paragraph (3) of this Article 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.

(3) The provisions of paragraph (2) of this Article shall not apply where the beneficial owner of the dividend is, or is associated with, 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. For the purposes 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.

(4) Dividends derived from a company which is a resident of Mauritius by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Mauritius and according to the laws of Mauritius, but if the recipient is the beneficial owner of the dividends the tax so charged shall not exceed:

(a) 10 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) 15 per cent of the gross amount of the dividends in all other cases.

(5) the term “dividends” as used in this Article 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 laws of the State of which the company making the distribution is a resident, and also includes any other item which, under the laws 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 provisions of paragraphs (1), (2) and (4) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividend is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of the Convention, as the case may be, shall apply.

(7) 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, 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, 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 2

The Governments of the Contracting States shall notify one another of the completion of the procedures required by their laws for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect in relation to dividends paid on or after 1 July 1986.

ARTICLE 3

This Protocol shall cease to be effective at such time as the Convention ceases to be effective in accordance with Article 31 of the Convention.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.
Done in duplicate at Port Louis this 23rd day of October 1986
For the Government of the United Kingdom of Great Britain and Northern Ireland:

C. A. Hamilton

For the Government of Mauritius:

S. Lutchmeenaraidoo

EXPLANATORY NOTE

(This note is not part of the Order)

The Protocol scheduled to this Order amends the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Mauritius) Order 1981.

Article 1 of the Protocol replaces Article 10 (Dividends) of the 1981 Convention with a new Article. This includes one important change relating to the tax treatment of dividends paid by Mauritian companies to United Kingdom shareholders following changes made by Mauritius to its method of taxing company profits and distributions. Dividends flowing to the United Kingdom from Mauritius will be subject to tax at a rate not exceeding 10 per cent in Mauritius where the dividends are paid to a company which controls at least 10 per cent of the voting power in the paying company. In all other cases the rate of tax is not to exceed 15 per cent. The tax treatment of dividends paid by a United Kingdom company to a Mauritian shareholder remains unchanged.

The Protocol takes effect in relation to dividends paid on or after 1st July 1986.