4-Morpholino-2:2-diphenyl ethyl butyrate, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-morpholino-2:2-diphenyl ethyl butyrate.

4-Dimethylamino-1:2-diphenyl-3-methyl-2-propionyloxybutane, its salts and any preparation, admixture, extract or other substance containing any proportion of 4-dimethylamino-1:2-diphenyl-3-methyl-2-propionyloxybutane.

DEATH DUTIES

1956 No. 998

The Double Taxation Relief (Estate Duty) (India) Order, 1956

Made - - - - 29*th June,* 1956

At the Court at Buckingham Palace, the 29th day of June, 1956

Present,

The Queen's Most Excellent Majesty in Council.

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of subsection (2) of section fifty-six of the Finance (No. 2) Act, 1945(**a**), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by subsection (1) of section fifty-four of the said Act 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 (Estate Duty) (India) Order, 1956.

2. It is hereby declared—

(*a*) that the arrangements specified in the Agreement set out in the Schedule to this Order have been made with the Government of India with a view to affording relief from double taxation in relation to estate duty payable under the laws of the United Kingdom and duty of a similar character imposed under the laws of India; and

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

W. G. Agnew.

SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF INDIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO DUTIES ON THE ESTATES OF DECEASED PERSONS.

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of India, desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to duties on the estates of deceased persons, have agreed as follows:—

(**a**) 9 & 10 Geo. 6. c. 13.

ARTICLE I

The duties which are the subject of the present Agreement are:—

(*a*) In India, the estate duty imposed under the Estate Duty Act, 1953 (No. 34 of 1953), and

(*b*) In the United Kingdom, the estate duty imposed in Great Britain.

ARTICLE II

(1) In the present Agreement, unless the context otherwise requires:—

(*a*) The term "India" means all the States and territories comprised in the Union of India;

(*b*) The term "United Kingdom" means Great Britain and Northern Ireland;

(*c*) The term "Great Britain" means England, Wales and Scotland and does not include the Channel Islands and the Isle of Man;

(*d*) The term "territory" when used in relation to one or the other Contracting Government means India or Great Britain, as the context requires;

(*e*) The term "duty" means the estate duty imposed in India or the estate duty imposed in Great Britain, as the context requires.

(2) For the purposes of the present Agreement, the question whether a deceased person was at the time of his death domiciled in any part of the territory of one of the Contracting Governments shall be determined in accordance with the law in force in that territory.

(3) In the application of the provisions of the present Agreement by either Contracting Government, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting Government relating to duty.

ARTICLE III

(1) Subject to paragraph (2) of this Article, duty shall not be imposed in India on the death of a person who was not domiciled at the time of his death in any part of India but was domiciled in some part of Great Britain on any property situate outside India:

Provided that nothing in this paragraph shall prevent the imposition of duty in India on—

(*a*) any settled property of which the deceased was life tenant where the settlor was domiciled in India at the time the settlement took effect; or

(*b*) property that passes under a disposition or devolution regulated by the law of some part of India.

(2) Nothing in the present Agreement shall affect any provision of the law of India imposing duty on shares in or debentures of a company incorporated outside India which carries on business in India and which has been treated for the purposes of the Indian Income-tax Act, 1922 (XI of 1922), as resident in India for two out of the three completed assessments immediately preceding the death; nor shall anything in the present Agreement be considered to confer a right to a credit against duty so imposed for any duty imposed in Great Britain on any such shares or debentures.

(3) Duty shall not be imposed in Great Britain on the death of a person who was not domiciled at the time of his death in any part of Great Britain but was domiciled in some part of India on any property situate outside Great Britain:

Provided that nothing in this paragraph shall prevent the imposition of duty in Great Britain on any property which passes under a disposition or devolution regulated by the law of some part of Great Britain.

ARTICLE IV

(1) Subject to paragraph (2) of this Article, where a person was at the time of his death domiciled in any part of the territory of one of the Contracting Governments, the situs of any property which for the purposes of duty passes or is deemed to pass on his death shall, for the purposes of the imposition of

duty and of the credit to be allowed under Article VI, be determined exclusively in accordance with the rules in Article V of the present Agreement.

(2) Paragraph (1) of this Article shall apply if, and only if, apart from the said Article V—

(*a*) duty would be imposed on the property under the law of each of the Contracting Governments ; or

(*b*) duty would be imposed on the property under the law of one of the Contracting Governments and would, but for some specific exemption, also be imposed thereon under the law of the other Contracting Government.

ARTICLE V

The rules referred to in paragraph (1) of Article IV are:—

(*a*) Rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located ;

(*b*) Rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death of the deceased person, or, if *in transitu*, at the place of destination ;

(*c*) Debts, secured or unsecured and whether under seal or not, excluding the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated at the place where the debtor was residing at the time of death of the deceased person:

Provided that, if the interest on any such debt was chargeable to income-tax under the Indian Income-tax Act, 1922 (XI of 1922), as having accrued or arisen in India, the debt shall be deemed to be situated in India ;

(*d*) Bank accounts shall be deemed to be situated at the branch at which the account was kept ;

(*e*) Securities issued by any government or by any local or public authority shall be deemed, if in bearer form, to be situated at the place where they were located at the time of the deceased's death and, if inscribed or registered, at the place of inscription or registration:

Provided that sterling securities issued by the Government of India or of any State in India, or by any local or public authority in India, shall be deemed to be situated in the territory in which the deceased was domiciled at the time of his death ;

(*f*) Shares, stock, debentures or debenture stock in a company (including any such property held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where the company was incorporated ;

(*g*) Moneys payable under a policy of assurance or insurance, whether under seal or not, shall be deemed to be situated at the place where the policy provides that the moneys shall be payable or, in the absence of any such provision, at the head office of the company issuing the policy ;

(*h*) An interest in a partnership shall be deemed to be situated at the place where the business is carried on ; and if the business is carried on at more than one place an appropriate proportion of the interest shall be deemed to be situated at each of those places ;

(*i*) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains is carried on ; and if a trade, business or profession is carried on at more than one place an appropriate proportion of the goodwill shall be deemed to be situated at each of those places ;

(*j*) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft ;

(*k*) Patents, trade marks and designs shall be deemed to be situated at the place where they are registered ;

(*l*) Copyright, franchises and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom are exercisable ;

(*m*) Rights or causes of action *ex delicto* surviving for the benefit of the estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose ;

(*n*) A judgment debt shall be deemed to be situated where the judgment is recorded :

Provided that where the judgment was given in proceedings instituted to enforce a debt which, had it passed on the death, would have fallen within paragraph (*c*) of this Article, the judgment debt shall be deemed to be situated where that debt would have been situated ;

(*o*) Any other right or interest shall—

(i) where the deceased person was domiciled at the date of his death in the territory of only one of the Contracting Governments, be deemed to be situated at the place determined by the law in force in the territory of the other Contracting Government ;

(ii) where the deceased person was domiciled at the date of his death in the territory of both Contracting Governments, be deemed to be situated—

(*aa*) for the purposes of the imposition of duty in India, at the place determined by the law in force in India, and

(*bb*) for the purposes of the imposition of duty in Great Britain, at the place determined by the law in force in England or Scotland as the case may be.

ARTICLE VI

(1) Where one Contracting Government imposes duty on any property which is not situated in its territory but is situated in the territory of the other Contracting Government, the former Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other Contracting Government as is attributable to such property.

(2) Where each Contracting Government imposes duty on any property which is situated—

(*a*) in the territory of both Governments, or

(*b*) outside both territories,

each Government shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit which bears the same proportion to the amount of its duty so attributable or to the amount of the other Contracting Government's duty attributable to the same property, whichever is the less, as the former amount bears to the sum of both amounts.

(3) For the purposes of this Article, the amount of the duty of a Contracting Government attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty, otherwise than in respect of duty payable in the territory of the other Contracting Government.

ARTICLE VII

(1) Any claim for a credit or for a refund of duty founded on the provisions of the present Agreement shall be made within six years from the date of the death of the deceased person in respect of whose estate the claim is made, or,

in the case of a reversionary interest where payment of duty is deferred until the date on which the interest falls into possession, within six years from that date.

(2) Any such credit allowed or refund made shall be allowed or made without payment of interest on the amount credited or refunded.

ARTICLE VIII

(1) The taxation authorities of the Contracting Governments shall exchange such information (being information available under the respective taxation laws of the Contracting Governments) as is necessary for carrying out the provisions of the present Agreement or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the duties which are the subject of the present Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the administration, assessment and collection of the duties which are the subject of the present Agreement. No information shall be exchanged which might disclose any trade secret or trade process.

(2) As used in this Article, the term "taxation authorities" means—

(*a*) in the case of India, the Central Board of Revenue or their authorised representative;

(*b*) in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative;

(*c*) in the case of Northern Ireland (to which the present Agreement applies under Article X), the Minister of Finance or his authorised representative;

(*d*) in the case of any territory to which the present Agreement is extended under Article IX, the competent authority for the administration in such territory of the duties to which the present Agreement applies.

ARTICLE IX

(1) The present Agreement may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes duties substantially similar in character to those which are the subject of the present Agreement, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Governments in notes to be exchanged for this purpose.

(2) The termination in respect of India or the United Kingdom of the present Agreement under Article XII shall, unless otherwise expressly agreed by the Contracting Governments, terminate the application of the Agreement to any territory to which it has been extended under this Article.

ARTICLE X

The present Agreement shall apply in relation to the estate duty imposed in Northern Ireland as it applies in relation to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland by the same procedure as is laid down in Article XII.

ARTICLE XI

The present Agreement shall come into force on the date on which the last of all such things shall have been done in India and the United Kingdom as are necessary to give the Agreement the force of law in India and the United Kingdom respectively, and the Agreement shall be effective only as to—

(*a*) the estates of persons dying on or after such date; and

(*b*) the estate of any person dying before such date and after the 15th October 1953, where the accountable person elects that the provisions of the present Agreement shall be applied to such estate.

ARTICLE XII

(1) The present Agreement shall remain in force for not less than three years after the date of its coming into force.

(2) If, not less than six months before the expiration of such period of three years, neither of the Contracting Governments shall have given to the other Contracting Government written notice through diplomatic channels of its intention to terminate the present Agreement, the Agreement shall remain in force after such period of three years until either of the Contracting Governments shall have given written notice of such intention, in which event the present Agreement shall not be effective as to the estates of persons dying on or after the date (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

In witness whereof the undersigned, duly authorised thereto, have signed the present Agreement.

Done at New Delhi, in duplicate, the 3rd day of April, 1956.

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

Malcolm MacDonald.

For the Government of India

Manilal C. Shah.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Article V of the double estate duty Agreement with India which is scheduled to this Order provides a code of rules for determining the situs of the categories of property which may pass on the death of a person who dies domiciled in either country. The code of rules does not apply where the effect of applying it would be to bring within either country's charge to duty property which, apart from the code, would be outside the charge of the country in question (Paragraph (2) of Article IV). The estate duty chargeable in India to which a British company may become liable in certain circumstances on the death of a shareholder is not affected by the Agreement (Paragraph (2) of Article III).

For cases in which duty is charged by both countries, Article VI provides a system of "credits". Where property has a situs in one country and not in the other, the country of situs will retain its duty and the other country will allow a "credit" (Paragraph (1)); otherwise both countries will allow "credits", the sum of which will eliminate the smaller of the two duties (Paragraph (2)).

Provision is made for the exchange of information between the taxation authorities of the two countries.

The Agreement applies to the estate duty (separate from the British estate duty) which is imposed in Northern Ireland.

The Agreement is effective as regards the estates of persons who die on or after the date when it comes into force. But provision is made for the Agreement to be applied to the estate of any person who dies before the date on which the Agreement comes into force and after 15th October, 1953, if the accountable person so elects.