STATUTORY INSTRUMENTS

1980 No. 707

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Australia) Order 1980

Laid before the House of Commons in draft

Made - - - - 21*st May* 1980

At the Court at Buckingham Palace, the 21st day of May 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(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) (Australia) 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) (Australia) Order 1968(b) have been made with the Government of the Commonwealth of Australia 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 Australia; 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 by section 98(2) of the Finance Act 1972 (c. 41).
(b) S.I. 1968/305.

SCHEDULE

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE COMMONWEALTH OF AUSTRALIA AMENDING THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT CANBERRA ON 7 DECEMBER 1967.

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

Desiring to conclude a Protocol to amend the Agreement 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 Canberra on 7 December 1967 (hereinafter referred to as "the Agreement");

Have agreed as follows:

ARTICLE I

The following paragraph shall be added after paragraph (3) of Article 2 of the Agreement.

"(3) (A) Where under the law in force in one of the territories an individual's remuneration from an employment is reduced in charging it to tax in consequence of a period or periods of absence by the individual from that territory, or of the place where the employment is exercised, or of the domicile of the individual, by deducting either the whole or a fixed proportion of the amount arising, then

(*a*) where under this Agreement that remuneration would otherwise be relieved from tax in the other territory, the relief shall not extend to the amount so deducted; and

(*b*) the amount so deducted shall be regarded as income in respect of which the individual is exempt from and not subject to tax in the first-mentioned territory."

ARTICLE II

Article 8 of the Agreement shall be deleted and replaced by the following:

"ARTICLE 8

(1) (*a*) Dividends derived from a company which is resident in the United Kingdom by an Australian resident may be taxed in Australia.

(*b*) Where an Australian resident 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 resident in the United Kingdom and which are beneficially owned by an Australian resident shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) An Australian resident individual who receives dividends from a company which is resident in the United Kingdom shall, 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. Any such credit shall be treated for the purposes of Australian tax as assessable income from sources in the United Kingdom.

(3) Dividends derived from a company which is a resident of Australia and which are beneficially owned by a United Kingdom resident may be taxed in the United Kingdom. Such dividends may also be taxed in Australia but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(4) The term "dividends" as used in this Article includes any item (other than interest or royalties relieved from tax under Article 9 or Article 10 of this Agreement) which—

(*a*) in the case of the United Kingdom is, under the law of the United Kingdom, a distribution of a company;

(*b*) in the case of Australia is, or is deemed to be, under the laws in force in Australia relating to Australian tax, a dividend.

(5) If the beneficial owner of dividends being an Australian resident owns 10 per cent or more of the class of shares in respect of which the dividends are paid then paragraphs (1) and (2) of this Article shall not apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending 12 months or more before the relevant date. For the purpose of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares in question. Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for *bona fide* commercial reasons.

(6) The provisions of paragraphs (1) and (2) or, as the case may be, paragraph (3) of this Article shall not apply where a resident of one of the territories has in the other territory a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the trade or business carried on through such permanent establishment.

(7) Dividends paid by a company which is a resident of one of the territories and which are beneficially owned by a person who is not a resident of the other territory shall be exempt from tax in that other territory except insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other territory. Provided that this paragraph shall not apply in relation to any United Kingdom company which is also a resident of Australia or any Australian company which is also resident in the United Kingdom.

(8) The Government of one of the territories shall not impose on a company which is a resident of the other territory any tax in the nature of an undistributed profits tax on undistributed profits of the company on a basis that is less favourable than that applicable in the case of a company which is a resident of the first-mentioned territory."

ARTICLE III

This Protocol, which shall form an integral part of the Agreement, shall enter into force on the date when the last of all such things shall have been done in the United Kingdom and Australia as are necessary to give the Protocol the force of law in the United Kingdom and Australia respectively, and shall thereupon have effect:

(*a*) in the United Kingdom:

(i) as regards Article I, for any year of assessment beginning on or after 6 April 1980;

(ii) in relation to any dividend paid on or after 6 April 1977;

(*b*) in Australia:

(i) as regards Article I, for any year of income beginning on or after 1 July 1980;

(ii) in relation to any dividend paid on or after 6 April 1977.

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

Done in duplicate at Canberra this 29th day of January 1980.

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

DONALD TEBBIT

For the Government of the Commonwealth of Australia:

JOHN HOWARD

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order makes certain alterations to the Agreement with Australia signed on 7 December 1967.

The major alteration follows 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 a United Kingdom company to an overseas shareholder, came into operation on 6 April 1973. The Protocol provides that where a United Kingdom company pays a dividend to an Australian resident individual, the recipient is, subject to certain conditions, to receive the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would be entitled less income tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit.

The Protocol also changes the tax treatment in Australia of remuneration which is reduced in charging it to tax in the United Kingdom in consequence of periods of absence from the United Kingdom, or of the place where the employment is exercised, or of the domicile of the recipient. This has the effect of restricting the exemption in Australia of the remuneration of visiting teachers provided by Article 16 of the 1967 Agreement in circumstances where tax is not charged on the full amount of the remuneration in the United Kingdom.

The Protocol is expressed to take effect in relation to dividends paid on or after 6 April 1977. The change in the treatment of remuneration has effect, in Australia, for any year of income beginning on or after 1 July 1980.