STATUTORY INSTRUMENTS

1970 No. 1947

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Austria) Order 1970

Laid before the House of Commons in draft

Made - - - 17*th December* 1970

At the Court at Buckingham Palace, the 17th day of December 1970

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 section 347(6) of the Income Tax Act 1952(**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 section 347(1) of the said Income Tax Act 1952, as amended by section 39 and section 64 of the Finance Act 1965(**b**), 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) (Austria) Order 1970.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Republic of Austria 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 Austria; and

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

W. G. Agnew.

(**a**) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (**b**) 1965 c. 25.

SCHEDULE

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The United Kingdom of Great Britain and Northern Ireland and the Republic of Austria;

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

Have agreed as follows:

ARTICLE 1

Personal scope

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes covered

(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 (including surtax);

(ii) the corporation tax; and

(iii) the capital gains tax;

(*b*) in Austria:

(i) the income tax (*die Einkommensteuer*);

(ii) the corporation tax (*die Körperschaftsteuer*);

(iii) the contribution from income for the promotion of residential building and for the equalisation of family burdens (*der Beitrag vom Einkommen zur Förderung des Wohnbaues und für Zwecke des Familienlastenausgleiches*);

(iv) the contribution from income to the emergency fund (*der Katastrophenfondsbeitrag vom Einkommen*);

(v) the directors' tax (*die Aufsichtstratsabgabe*);

(vi) the tax on commercial and industrial enterprises, including the tax levied on the sum of wages (*die Gewerbesteuer einschliesslich der Lohnsummensteuer*);

(vii) the special tax on income (*die Sonderabgabe vom Einkommen*).

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify to each other any changes which are made in their respective taxation laws.

ARTICLE 3

General definitions

(1) In this Convention, unless the context otherwise requires:

(*a*) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in

accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea bed and sub-soil and their natural resources may be exercised;

(*b*) the term "Austria" means the Republic of Austria;

(*c*) the term "nationals" means:

(i) in relation to the United Kingdom, all citizens of the United Kingdom and Colonies who derive their status as such from their connection with the United Kingdom and all legal persons, partnerships and associations deriving their status as such from the law in force in the United Kingdom;

(ii) in relation to Austria, all Austrian nationals and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Austria;

(*d*) the terms "a Contracting State" and "the other Contracting State" mean the United Kingdom or Austria, as the context requires;

(*e*) the term "person" comprises an individual, a company and any other body of persons;

(*f*) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;

(*g*) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(*h*) the term "competent authority" means, in the case of the United Kingdom the Commissioners of Inland Revenue or their authorised representative, and in the case of Austria the Federal Ministry of Finance.

(2) Where under any provision of this Convention income is relieved from Austrian tax and, under the law in force in the United Kingdom, an individual, in respect of the said income, is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under this Convention in Austria shall apply only to so much of the income as is remitted to or received in the United Kingdom.

(3) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Fiscal domicile

(1) For the purposes of this Convention, the term "resident of a Contracting State" means, subject to the provisions of paragraphs (2) and (3) of this Article, any person who, under the law of that State, is liable to taxation therein by reason of his domicile, residence, place of management or any other criterion of a similar nature; the term does not include any individual who is liable to tax in that Contracting State only if he derives income from sources therein. The terms "resident of the United Kingdom" and "resident of Austria" shall be construed accordingly.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual is a resident of both Contracting States, then his status shall be determined in accordance with the following rules:

(*a*) he shall be deemed to be a resident of the Contracting State in which he has a permanent home available to him. If he has a permanent home available to him in both Contracting States, he shall be deemed to be a resident of the Contracting State with which his personal and economic relations are closest (centre of vital interests);

(*b*) if the Contracting State in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting State, he shall be deemed to be a resident of the Contracting State in which he has an habitual abode;

(*c*) if he has an habitual abode in both Contracting States or in neither of them, he shall be deemed to be a resident of the Contracting State of which he is a national;

(*d*) if he is a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall endeavour to settle the question by mutual agreement.

(3) Where by reason of the provisions of paragraph (1) of this Article a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the Contracting State in which its place of effective management is situated.

ARTICLE 5

Permanent establishment

(1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

(2) The term "permanent establishment" shall include especially:

(*a*) a place of management;

(*b*) a branch;

(*c*) an office;

(*d*) a factory;

(*e*) a workshop;

(*f*) a mine, quarry or other place of extraction of natural resources;

(*g*) a building site or construction or assembly project which exists for more than twelve months.

(3) The term "permanent establishment" shall not be deemed to include:

(*a*) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(*b*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(*c*) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(*d*) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

(*e*) the maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research or for similar activities which have a preparatory or auxiliary character, for the enterprise.

(4) A person acting in a Contracting State on behalf of an enterprise of the other Contracting State—other than an agent of an independent status to whom the provisions of paragraph (5) of this Article apply—shall be deemed to be a permanent establishment in the first-mentioned State if he has, and habitually exercises in that State, an authority to conclude contracts in the name of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise.

(5) An enterprise of a Contracting State shall not be deemed to have a permanent establishment in the other Contracting State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, where such persons are acting in the ordinary course of their business.

(6) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

ARTICLE 6

Income from immovable property

(1) Income from immovable property may be taxed in the Contracting State in which such property is situated.

(2) (*a*) The term "immovable property" shall, subject to the provisions of sub-paragraph (*b*) below, be defined in accordance with the law of the Contracting State in which the property in question is situated.

(*b*) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of professional services.

ARTICLE 7

Business profits

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(3) In the determination of the profits of a permanent establishment, there shall be allowed as deductions expenses of the enterprise (other than expenses which would not be deductible if the permanent establishment were a separate enterprise) which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) In so far as it has been customary in a Contracting State, according to its law, to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total income of the enterprise to its various parts, nothing in paragraph (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles of this Article.

(5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Where profits include items which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

(8) The term "profits" as used in this Article includes the profits derived by any partner from his participation in a partnership including in the case of Austria from participation in a sleeping partnership (*Stille Gesellschaft*) created under Austrian law.

ARTICLE 8

Shipping and air transport

(1) A resident of a Contracting State shall be taxable only in that Contracting State on profits from the operation of ships or aircraft other than profits from voyages of ships or aircraft confined solely to places in the other Contracting State.

(2) In respect of the operation of ships or aircraft in international traffic a resident of the United Kingdom shall be exempt from any Austrian taxes on capital.

ARTICLE 9

Associated enterprises

Where

(*a*) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

(*b*) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State;

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

ARTICLE 10

Dividends

(1) Dividends paid by a company being a resident of a Contracting State which are beneficially owned by a resident of the other Contracting State may be taxed in that other State.

(2) However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident, and according to the law of that State, but the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(3) The term "dividends" as used in this Article means income from shares, *jouissance* shares or *jouissance* rights, mining shares, founders' 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 law of the State of which the company making the distribution is a resident and also includes any other item (other than interest or royalties relieved from tax under the provisions of Article 11 or

Article 12 of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, has in the other Contracting 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 a business carried on through that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) If the beneficial owner of a dividend being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividend is paid then the relief from tax provided for in paragraph (2) of this Article shall not apply to the dividend to the extent that it can have been paid only out of profits which the company paying the dividend earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term "relevant date" means the date on which the beneficial owner of the dividend became the owner of 10 per cent or more of the class of shares in question. Provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(6) 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 and beneficially owned by 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 that other State.

ARTICLE 11

Interest

(1) Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises.

(3) The provisions of paragraph (1) of this Article shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the debt-claim from which the interest arises is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(4) Any provision of the law of one of the Contracting States which relates only to interest paid to a non-resident company with or without any further requirement, or which relates only to interest payments between inter-connected companies with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other Contracting State to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a dividend or distribution.

(5) The exemption from tax provided for in paragraph (1) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

(*a*) does not bear tax in respect thereof in the Contracting State of which it is a resident; and

(*b*) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(6) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(7) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.

ARTICLE 12

Royalties

(1) Subject to the provisions of paragraph (2) of this Article, royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) Where royalties paid by a company which is a resident of a Contracting State are beneficially owned by a company which is a resident of the other Contracting State and controls directly or indirectly more than 50 per cent of the voting power of the company paying the royalties, those royalties may, notwithstanding the provisions of paragraph (1) of this Article, be taxed in the first-mentioned State, but the tax so charged shall not exceed 10 per cent of the gross amount of the royalties.

(3) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(4) The provisions of paragraphs (1) and (2) of this Article shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, has in the other Contracting State a permanent establishment and the right or property giving rise to the royalties is effectively connected with a business carried on through that permanent establishment. In such a case, the provisions of Article 7 shall apply.

(5) Any provision of the law of a Contracting State which requires royalties paid by a company to be left out of account as a deduction in computing the company's taxable profits because they are treated as a dividend or distribution shall not operate in relation to royalties paid to a resident of the other Contracting State. The preceding sentence shall not however apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of the provisions of this Article and not for bona fide commercial reasons.

(6) Where, owing to a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

ARTICLE 13

Capital gains

(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article 6, may be taxed in the Contracting State in which such property is situated.

(2) Capital gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other State.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of a Contracting State from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that Contracting State.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(5) Notwithstanding the provisions of paragraph (4) of this Article, a Contracting State may impose tax on capital gains from the alienation of movable property if the alienator:

(*a*) was a resident of that Contracting State at any time within a period of three years preceding the alienation; and

(*b*) is a resident of the other Contracting State at the time the alienation is made; and

(*c*) is not subject to tax on the gains from the alienation in that other State.

ARTICLE 14

Independent personal services

(1) Income derived by a resident of a Contracting State in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other Contracting State but only so much of it as is attributable to that fixed base.

(2) The term "professional services" includes especially independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects and accountants.

ARTICLE 15

Employments

(1) Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1) of this Article, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

(*a*) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned of that other State; and

(*b*) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(*c*) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration in respect of an employment exercised aboard a ship or aircraft in international traffic may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.

ARTICLE 16

Directors' fees

Directors' fees and similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

ARTICLE 17

Artistes and athletes

Notwithstanding the provisions of Articles 14 and 15, income derived by public entertainers, such as theatre, motion picture, radio or television artistes, and musicians, and by athletes, from their personal activities as such may be taxed in the Contracting State in which those activities are exercised.

ARTICLE 18

Pensions

(1) Subject to the provisions of paragraphs (1) and (2) of Article 19, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

(2) The term "annuity" means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money's worth.

ARTICLE 19

Governmental functions

(1) Remuneration or pensions paid out of public funds of the United Kingdom or Northern Ireland or of the funds of any local authority in the United Kingdom to any individual in respect of present or past services rendered to the Government of the United Kingdom or Northern Ireland or a local authority in the United Kingdom shall be taxable only in the United Kingdom unless the individual is an Austrian national without also being a United Kingdom national.

(2) Remuneration or pensions paid by, or out of funds created by, Austria or a political subdivision or a local authority thereof to any individual in respect of present or past services rendered to Austria or a political subdivision or a local authority thereof, shall be taxable only in Austria unless the individual is a national of the United Kingdom without also being an Austrian national.

(3) The provisions of paragraphs (1) and (2) of this Article shall not apply to remuneration or pensions in respect of services rendered in connection with any trade or business.

ARTICLE 20

Students

(1) Payments which a student or business apprentice who is or was formerly a resident of a Contracting State and who is present in the other Contracting State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that other State, provided that such payments are made to him from sources outside that other State.

(2) Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State if the employment is directly related to his studies or apprenticeship.

ARTICLE 21

Teachers

A professor or teacher who visits a Contracting State for a period not exceeding two years for the purpose of teaching at a university, college, school or other educational institution in that Contracting State and who is, or was immediately before that visit, a resident of the other Contracting State shall be exempt from tax in the first-mentioned Contracting State on any remuneration for such teaching.

ARTICLE 22

Income not expressly mentioned

Items of income of a resident of a Contracting State which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

ARTICLE 23

Adjustment of withholding tax

Where tax has been deducted at the source from dividends, interest or royalties in excess of the amount of tax chargeable in accordance with the provisions of Article 10, 11 or 12 the excess amount of tax shall be refunded upon application being made to the competent authority concerned within three years of the end of the calendar year in which the dividends, interest or royalties were payable.

ARTICLE 24

Elimination of double taxation

(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof) Austrian tax payable under the laws of Austria and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Austria (excluding in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which Austrian tax is computed. For the purpose of this paragraph, the term "Austrian tax" shall not include the tax on commercial and industrial enterprises (*die Gewerbesteuer*) computed on a basis other than profits.

(2) Where a resident of Austria derives income from sources within the United Kingdom which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Austria shall allow as a deduction from the tax on the income of that person, an amount equal to the tax on income paid in the United Kingdom.

The deduction shall not, however, exceed that part of the tax on income as computed before the deduction is given, which is appropriate to the income which may be taxed in the United Kingdom.

(3) For the purposes of paragraphs (1) and (2) of this Article income, profits and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other Contracting State.

ARTICLE 25

Personal allowances

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of Austria shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom.

(2) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Austrian tax as Austrian nationals not resident in Austria.

(3) Nothing in this Convention shall entitle an individual who is a resident of a Contracting State and whose income from the other Contracting State consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purposes of taxation in that other Contracting State.

ARTICLE 26

Non-discrimination

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned State are or may be subjected.

(4) In determining for the purpose of United Kingdom tax whether a company is a close company, the term "recognised stock exchange" shall include any stock exchange in Austria which is a stock exchange within the meaning of the Austrian law relating to stock exchanges.

(5) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes on account of civil status or family responsibilities which are granted to individuals so resident, nor as conferring any exemption from tax in a Contracting State in respect of dividends paid to a company which is a resident of the other Contracting State.

ARTICLE 27

Mutual agreement procedure

(1) Where a resident of a Contracting State considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those States, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 28

Exchange of information

The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with assessment and collection of taxes which are the subject of this Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process, or the disclosure of which would be contrary to public policy.

ARTICLE 29

Territorial extension

(1) This Convention 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 taxes substantially similar in character to those to which this Convention applies. 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 States in notes to be exchanged through diplomatic channels.

(2) Unless otherwise agreed by both Contracting States, the termination of this Convention shall terminate the application of this Convention to any territory to which it has been extended under the provisions of this Article.

ARTICLE 30

Entry into force

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

(2) This Convention shall enter into force upon the exchange of the instruments of ratification**(a)** and shall thereupon have effect:

(a) Instruments of Ratification were exchanged on 13th November 1970.

(*a*) in the United Kingdom:

(i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April, 1969; and

(ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1969;

(*b*) in Austria:
for any taxable year beginning on or after 1st January, 1969.

(3) Subject to the provisions of paragraph (4) of this Article the Convention between the United Kingdom of Great Britain and Northern Ireland and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed at Vienna on 20th July, 1956**(a)** shall cease to have effect as respects taxes to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

(4) Where any provision of the Convention signed on 20th July, 1956 would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect for any year of assessment, financial year or taxable year beginning before the entry into force of this Convention.

(5) The provisions of sub-paragraphs (*a*) and (*b*) of paragraph (2) of this Article, of paragraph (3) of this Article and of paragraph (4) of this Article shall not apply in relation to dividends but the provisions of this Convention shall have effect, and the provisions of the Convention signed on 20th July, 1956 shall cease to be effective, in relation to dividends payable after the expiration of thirty days following the date of entry into force of this Convention.

(6) The Convention signed on 20th July, 1956 shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 31

Termination

This Convention shall remain in force until denounced by one of the Contracting States. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1974. In such event, the Convention shall cease to have effect:

(*a*) in the United Kingdom:

(i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the notice is given;

(ii) as respects corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given;

(*b*) in Austria:
for any taxable year beginning on or after 1st January in the calendar year next following that in which the notice is given.

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

Done in duplicate at London this 30th day of April 1969, in the English and German languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

CHALFONT

For the Republic of Austria:

JOSEF SCHÖNER

(a) S.I. 1957/598 (1957 I, p. 1139).

EXPLANATORY NOTE

(This Note is not part of the Order.)

Under the Convention with Austria scheduled to this Order (which is to replace the Convention signed in Vienna on 20th July 1956) shipping and air transport profits, certain trading profits not arising through a permanent establishment, interest, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries and pensions are normally to be taxed by the paying government only. The remuneration of visiting teachers and professors, and certain payments made to visiting students are (subject to certain conditions) to be exempt in the country visited. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment which the taxpayer has in the other country.

The rate of tax in the source country on income flowing from one country to the other is, in general, not to exceed 15 per cent in the case of dividends, and 10 per cent in the case of royalties paid to a company which controls more than 50 per cent of the voting power of the company paying the royalties. Other royalties are normally to be taxed only in the country of the taxpayer's residence.

Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country, and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention is in general to take effect in the United Kingdom for 1969-70 and subsequent years.

SI 1970/1947
ISBN 0-11-001947-4

