1966 No. 227

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Canada) Order 1966

Laid before the House of Commons in draft

Made - - - - 4th March 1966

At the Court of Saint James, the 4th day of March 1966

Present,

Her Majesty Queen Elizabeth The Queen Mother
His Royal Highness Prince Richard of Gloucester
Lord President **Mr. Gunter**
Lord Shepherd **Miss Herbison**

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the twenty-fifth day of January, 1966, to delegate to the following Counsellors of State (subject to the exceptions hereinafter mentioned) or any two or more of them, that is to say, His Royal Highness The Prince Philip, Duke of Edinburgh, Her Majesty Queen Elizabeth The Queen Mother, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester, His Royal Highness Prince William of Gloucester and His Royal Highness Prince Richard of Gloucester, full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas Her Majesty was further pleased to except from the number of the said Counsellors of State His Royal Highness The Prince Philip, Duke of Edinburgh, Her Royal Highness The Princess Margaret, Countess of Snowdon, His Royal Highness The Duke of Gloucester and His Royal Highness Prince William of Gloucester while absent from the United Kingdom:

And whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of subsection (6) of section 347 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 Queen Elizabeth The Queen Mother and His Royal Highness Prince Richard of Gloucester, being authorised thereto by the said Letters Patent, and in pursuance of the powers conferred on Her Majesty by subsection (1) of the said section 347 as amended by section 64 of the Finance Act 1965(b) and of all other powers in that behalf, do hereby,

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

by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Canada) Order 1966.

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 Canada with a view to affording relief from double taxation in relation to income tax, profits tax or corporation tax and taxes of a similar character imposed by the laws of Canada; 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 CANADA FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON CERTAIN CLASSES OF INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on certain classes of income,

Have agreed as follows:

ARTICLE I

(1) The taxes which are the subject of this Agreement are—

(*a*) In Canada:

the income taxes, including the old age security tax on income, which are imposed by the Government of Canada (hereinafter referred to as "Canadian tax").

(*b*) In the United Kingdom of Great Britain and Northern Ireland:

the income tax, including surtax, the profits tax and the corporation tax (hereinafter referred to as "United Kingdom tax").

(2) This Agreement shall also apply to any identical or substantially similar taxes which are subsequently imposed in addition to, or in place of, the taxes referred to in paragraph (1) by either Contracting Government.

ARTICLE II

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

(*a*) the term "United Kingdom" means Great Britain and Northern Ireland;

(*b*) the terms "one of the territories" and "the other territory" mean the United Kingdom or Canada, as the context requires;

(*c*) the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; in the case of Canada, the Minister of National Revenue or his authorized representative; and, in the case of any territory to which this Agreement is extended under Article IX, the competent authority for the administration in such territory of the taxes to which this Agreement applies;

(*d*) the term "tax" means United Kingdom tax or Canadian tax, as the context requires;

(*e*) the term "person" includes any body of persons, corporate or not corporate;

(*f*) the term "company" includes any body corporate;

(*g*) (i) the terms "resident of the United Kingdom" and "resident of Canada" mean respectively any person who is resident in the United Kingdom

for the purposes of United Kingdom tax and any person who is resident in Canada for the purposes of Canadian tax;

(ii) where, by reason of the provisions of sub-paragraph (i) above, an individual is a resident of both territories, then this case shall be solved in accordance with the following rules:

(*aa*) he shall be deemed to be a resident of the territory in which he has a permanent home available to him; if he has a permanent home available to him in both territories, he shall be deemed to be a resident of the territory with which his personal and economic relations are closest (hereinafter referred to as his centre of vital interests);

(*bb*) if the territory 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 territory, he shall be deemed to be a resident of the territory in which he has an habitual abode;

(*cc*) if he has an habitual abode in both territories or in neither of them, he shall be deemed to be a resident of the territory of which he is a national;

(*dd*) if he is a national of both territories or of neither of them, the taxation authorities of the territories shall determine the question by mutual agreement;

(iii) where, by reason of the provisions of sub-paragraph (i) above, a person other than an individual is a resident of both territories, then it shall be deemed to be a resident of the territory in which its place of effective management is situated;

(*h*) the terms "resident of one of the territories" and "resident of the other territory" mean a person who is a resident of the United Kingdom, or a person who is a resident of Canada, as the context requires;

(*i*) the terms "United Kingdom enterprise" and "Canadian enterprise" mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of Canada, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Canadian enterprise, as the context requires;

(*j*) (i) the term "permanent establishment" means a fixed place of business in which the business of an enterprise is wholly or partly carried on;

(ii) the term "permanent establishment" shall include especially—

(*aa*) a place of management;

(*bb*) a branch;

(*cc*) an office;

(*dd*) a factory;

(*ee*) a workshop;

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

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

(iii) the term "permanent establishment" shall not be deemed to include—

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

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

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

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

(*ee*) 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;

(iv) a person acting in one of the territories on behalf of an enterprise of the other territory—other than an agent of an independent status to whom sub-paragraph (*j*) (v) applies—shall be deemed to be a permanent establishment in the first-mentioned territory—

(*aa*) if he has, and habitually exercises in that first-mentioned territory, 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, or

(*bb*) if he maintains in that first-mentioned territory a stock of goods or merchandise belonging to the enterprise from which he regularly fills orders on behalf of the enterprise;

(v) an enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business in that other territory 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;

(vi) the fact that a company which is a resident of one of the territories controls or is controlled by a company which is a resident of the other territory, or which carries on business in that other territory (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other;

(*k*) the term "international traffic" includes traffic between places in one country in the course of a voyage which extends over more than one country;

(*l*) 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.

(2) In the application of the provisions of this Agreement by one of the Contracting Governments any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of that Contracting Government relating to the taxes which are the subject of this Agreement.

ARTICLE III

(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Canadian tax unless the enterprise carries on business in Canada through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by Canada on those profits but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Canadian enterprise shall not be subject to United Kingdom tax unless the enterprise carries on business in the United Kingdom through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, tax may be imposed by the United Kingdom on those profits but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories carries on business in the other territory through a permanent establishment situated therein, there shall in each territory be attributed to that permanent establishment the industrial or commercial 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 wholly independently with the enterprise of which it is a permanent establishment.

(4) In determining the industrial or commercial profits of a permanent establishment, there shall be allowed as deductions all expenses which would be deductible if the permanent establishment were an independent enterprise in so far as they are reasonably allocable to the permanent establishment, including executive and general administrative expenses so deductible and allocable, whether incurred in the territory in which the permanent establishment is situated or elsewhere.

(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) Any dividend, interest, royalty or rent arising in one of the territories to a resident of the other territory who has in the first-mentioned territory a permanent establishment with which, as the case may be, the holding by virtue of which the dividend is paid, or the debt-claim from which the interest arises, or the right or property giving rise to the royalty or rent, is effectively connected, may be taxed as industrial or commercial profits; subject to this, the term "industrial or commercial profits" does not include income in the form of dividends, interest, royalties, or rents or remuneration for labour or personal services.

ARTICLE IV

Where

(*a*) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory, or

(*b*) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory,

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 V

Profits of an enterprise from the operation of ships or aircraft in international traffic shall be taxable only in the territory in which the place of effective management of the enterprise is situated.

ARTICLE VI

Subject to paragraph (6) of Article III, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including rents or royalties in respect of motion picture films and films or video tapes for use in connection with television) derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof shall be exempt from tax in that first-mentioned territory.

ARTICLE VII

(1) Any pension (other than a pension referred to in paragraph (2), (3) or (4) of this Article), or any annuity derived from sources within one of the territories by an individual who is a resident of the other territory shall be exempt from tax in the first-mentioned territory.

Provided that this paragraph shall also apply instead of paragraphs (2), (3) and (4) to any pensions referred to in those paragraphs if the provisions of this paragraph are more favourable to the individual to whom the pension is paid.

(2) Subject to the proviso to paragraph (1), any pension paid by one of the Contracting Governments to an individual for services rendered to it in the discharge of governmental functions by that individual shall be exempt from tax in the territory of the other Contracting Government if

(*a*) that individual was a resident of the other territory on the relevant date;

(*b*) the first payment period of that pension commenced before the relevant date, and

(*c*) that pension would have been exempt from tax in that territory if Article VIII of the Agreement between Canada and the United Kingdom with respect

to taxes on income signed in London on the 5th day of June 1946(a) were in force.

(3) Subject to the proviso to paragraph (1), any pension paid by one of the Contracting Governments to the surviving spouse or other surviving dependant of an individual who died before the relevant date, in respect of services rendered to it in the discharge of governmental functions by that individual, shall be exempt from tax in the territory of the other Contracting Government if

(*a*) that spouse or other dependant was a resident of the other territory on the relevant date, and

(*b*) that pension would have been exempt from tax in that territory if Article VIII of the Agreement between Canada and the United Kingdom with respect to taxes on income signed in London on the 5th day of June 1946 were in force.

(4) Subject to the proviso to paragraph (1), any pension paid by one of the Contracting Governments to the surviving spouse or other surviving dependant of an individual who died after the relevant date in respect of services rendered to it in the discharge of governmental functions by that individual shall be exempt from tax in the territory of the other Contracting Government if it relates to a pension paid to that individual which was exempt from tax in the territory of the other Contracting Government by virtue of paragraph (2).

(5) In this Article the term "relevant date" means, in relation to a pension paid to a resident of Canada, 1st day of January 1965 and, in relation to a pension paid to a resident of the United Kingdom, 6th day of April 1965.

ARTICLE VIII

(1) The taxation authorities of the Contracting Governments shall, on request, 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 Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

(2) The taxation authorities of the Contracting Governments may communicate with each other directly for the purpose of giving effect to the provisions of this Agreement and for resolving any difficulty or doubt as to the application or interpretation of the Agreement.

ARTICLE IX

(1) This 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 taxes substantially similar in character to those which are the subject of this 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 of this Agreement under Article XI shall, unless otherwise expressly agreed by both Contracting Governments, terminate the application of the Agreement to any territory to which it has been extended under this Article.

ARTICLE X

This Agreement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Canada as are necessary to

(a) S.R. & O. 1946/1885 (Rev. X, p. 369: 1946 I, p. 870).

give the Agreement the force of law in the United Kingdom and Canada respectively, and shall thereupon have effect—

(*a*) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st day of January 1965;

(ii) in respect of other Canadian tax, for the 1965 taxation year and subsequent years;

(*b*) in the United Kingdom:

(i) in respect of income tax for the year of assessment beginning on the 6th day of April, 1965, and subsequent years;

(ii) in respect of surtax for the year of assessment beginning on the 6th day of April, 1964, and subsequent years;

(iii) in respect of profits tax for any chargeable accounting period beginning on or after the 1st day of January, 1965, and for the unexpired portion of any chargeable accounting period current at that date; and

(iv) in respect of corporation tax for the financial year 1964 and subsequent years.

ARTICLE XI

This Agreement shall continue in effect until terminated in accordance with the provisions of this Article. Notice of termination may be given by either Contracting Government to the other Contracting Government on, or before the 30th day of June in any calendar year and in such event this Agreement shall cease to be effective—

(*a*) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after the 1st day of January in the calendar year next following that in which such notice is given; and

(ii) in respect of other Canadian tax for any taxation year ending in or after the calendar year next following that in which such notice is given;

(*b*) in the United Kingdom:

(i) in respect of income tax for any year of assessment beginning on or after the 6th day of April in the calendar year next following that in which such notice is given;

(ii) in respect of surtax for any year of assessment beginning on or after the 6th day of April in the calendar year in which such notice is given;

(iii) in respect of corporation tax for any financial year beginning on or after the 1st day of April in the calendar year next following that in which notice is given.

IN WITNESS WHEREOF the undersigned, duly authorized thereto, have signed this Agreement.

DONE at Ottawa this sixth day of December, 1965, in two copies in the English and French languages, both texts being equally authentic.

For the Government of the United Kingdom
H. LINTOTT

For the Government of Canada
MITCHELL W. SHARP

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Agreement with Canada scheduled to this Order is more limited in scope than the Agreement which was signed on 5th June, 1946, and which was terminated with effect from 6th April, 1965.

As in the earlier Agreement certain trading profits not arising through a permanent establishment, shipping and air transport profits and copyright royalties are to be taxed only in the country of the taxpayer's residence.

The provisions relating to pensions differ from those in the earlier Agreement. Both Government and other pensions are, in general, to be taxed only in the country of the taxpayer's residence. In certain circumstances, however, Government pensions are to continue to be taxed only by the paying Government, as in the earlier Agreement, unless the new basis is more favourable to the recipient of the pension.

Provision is included for the exchange of certain information between the taxation authorities of the two countries and for the extension of the Agreement to any territories for whose international relations the United Kingdom is responsible.

The Agreement is to take effect in the United Kingdom for income tax for the year 1965/66.