STATUTORY INSTRUMENTS

1973 No. 1326

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Denmark) Order 1973

Laid before the House of Commons in draft

Made - - - 27th July 1973

At the Court at Buckingham Palace, the 27th day of July 1973

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 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 this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, as amended by section 98 of the Finance Act 1972(**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) (Denmark) Order 1973.

2. It is hereby declared—

(*a*) that the arrangements specified in the Supplementary Protocol set out in the Schedule to this Order have been made with the Government of the Kingdom of Denmark 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 Denmark varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1950(**c**) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1967(**d**) and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1969(**e**); and

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(**a**) 1970 c. 10.
(**b**) 1972 c. 41.
(**c**) S.I. 1950/1195 (1950 I, p. 1019).
(**d**) S.I. 1967/163 (1967 I, p. 274).
(**e**) S.I. 1969/1068 (1969 II, p. 3126).

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

W. G. Agnew.

SCHEDULE

SUPPLEMENTARY PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 27TH MARCH 1950, AS MODIFIED BY THE PROTOCOLS SIGNED AT LONDON ON 7TH JULY 1966 AND ON 18TH DECEMBER 1968.

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

Desiring to conclude a Supplementary Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 27th March 1950, as modified by the Protocols signed at London on 7th July 1966 and on 18th December 1968 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

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

"ARTICLE VII

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

(*b*) Where a resident of Denmark is entitled to a tax credit in respect of such a dividend under paragraph 2 of this Article tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(*c*) Except as aforesaid, dividends derived from a company which is a resident of the United Kingdom and which are beneficially owned by a resident of Denmark shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

2. A resident of Denmark who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of paragraph 3 of this Article and provided he is the beneficial owner of the 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.

3. Paragraph 2 of this Article shall not apply where the beneficial owner of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the

voting power in the company paying the dividend. For the purpose of this paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

4. Dividends derived from a company which is a resident of Denmark and which are beneficially owned by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Denmark but the tax so charged shall not exceed:—

(*a*) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividends;

(*b*) in all other cases 15 per cent of the gross amount of the dividends.

5. If the beneficial owner of a dividend being a resident of Denmark owns 10 per cent or more of the class of shares in respect of which the dividend is paid then 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 beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

6. The provisions of paragraphs 1 and 2, or as the case may be paragraph 4, 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 business carried on through such permanent establishment. In such a case, the provisions of Article III of the present Convention shall apply.

7. The term "dividends" as used in this Article means income from shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the territory 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 Article VIII or Article VIIIA of the present Convention) which under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

8. Where a company which is a resident of one of the territories derives profits or income from the other territory, that other territory may not impose any tax on the dividends paid by the company and beneficially owned by persons who are not residents of that other territory, 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 territory."

ARTICLE 2

Each of the Contracting Parties shall notify to the other the completion of the procedure required by its law for the bringing into force of this Supplementary Protocol. This Supplementary Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect in relation to dividends paid on or after 6th April 1973.

ARTICLE 3

This Supplementary Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at Copenhagen this 8th day of February 1973 in the English and Danish languages, both texts being equally authoritative.

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

For the Government of the Kingdom of Denmark:
K. B. ANDERSEN.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Supplementary Protocol scheduled to this Order makes certain alterations to the Convention with Denmark signed on 27th March 1950 (as amended by Protocols signed on 7th July 1966 and 18th December 1968). These alterations follow from the enactment of the new United Kingdom corporation tax which, so far as it relates to the tax treatment of dividends paid by a United Kingdom company to an overseas shareholder, will come into operation on 6th April 1973. The supplementary Protocol provides that where a United Kingdom company pays a dividend to an individual resident in Denmark or to a Danish company which controls less than 10 per cent of the voting power in the paying company, 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 Supplementary Protocol is expressed to take effect in relation to dividends paid on or after 6th April 1973.

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