EXPLANATORY NOTE

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

This Order provides for the allowance of drawback of customs or excise duty paid in respect of hydrocarbon oil used in the manufacture or preparation of grease obtained from bones or greaves. The drawback applies when the grease is exported, or shipped or deposited in warehouse for use as stores, on or after 18th September, 1956. The quantity of oil in respect of which drawback is allowable is to be determined in accordance with the provisions of paragraph 10 of the First Schedule.

The Order also changes the rates for determining the quantities of hydrocarbon oil in respect of which drawback is allowed as respects the classes or descriptions of articles specified in Article 1 (2) and in paragraphs 1 to 9 and 11 of the First Schedule; and it withdraws the provision for drawback in respect of hydrocarbon oil used in the manufacture or preparation of the classes or descriptions of articles specified in Article 2.

INCOME TAX

DOUBLE TAXATION RELIEF

1956 No. 619

The Double Taxation Relief (Taxes on Income) (Federation of Rhodesia and Nyasaland) Order, 1956

Made - - - - 24th April, 1956

At the Court at Buckingham Palace, the 24th day of April, 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 (6) of section three hundred and forty-seven 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 subsection (1) of the said section three hundred and forty-seven, as amended by subsection (2) of section seventy of the Finance Act, 1952(**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) (Federation of Rhodesia and Nyasaland) Order, 1956.

2. It is hereby declared—

(*a*) that with a view to affording relief from double taxation in relation to income tax, profits tax or excess profits levy and taxes of a similar character imposed by the laws of the Federation of Rhodesia and Nyasaland the arrangements specified in the Agreement set out in the First

(**a**) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (**b**) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 33.

Schedule to this Order have been made with the Government of the Federation of Rhodesia and Nyasaland and the arrangements specified in the supplemental Agreement set out in the Second Schedule have been made with the Governments of Southern Rhodesia, Northern Rhodesia and Nyasaland; and

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

W. G. Agnew.

FIRST SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATION OF RHODESIA AND NYASALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

The Government of the United Kingdom of Great Britain and Northern Ireland and the Governor General of the Federation of Rhodesia and Nyasaland acting with the advice of the Executive Council of the Federation, that is to say, the Government of the Federation of Rhodesia and Nyasaland, desiring to conclude an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, have agreed as follows:—

ARTICLE I

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

(*a*) In the United Kingdom of Great Britain and Northern Ireland: the income tax (including surtax), the profits tax and the excess profits levy (hereinafter referred to as "United Kingdom tax").

(*b*) In the Federation of Rhodesia and Nyasaland: the income tax, supertax and undistributed profits tax (hereinafter referred to as "Federal tax").

(2) The present Agreement shall also apply to any other taxes of a substantially similar character imposed by either Contracting Government subsequently to the date of signature of the present Agreement.

ARTICLE II

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

(*a*) The term "United Kingdom" means Great Britain and Northern Ireland.

(*b*) The term "the Federation" means the Federation of Rhodesia and Nyasaland.

(*c*) The terms "one of the territories" and "the other territory" mean the United Kingdom or the Federation, as the context requires.

(*d*) The term "tax" means United Kingdom tax or Federal 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*) The terms "resident of the United Kingdom" and "resident of the Federation" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and is not resident in the Federation and any person who is resident in the Federation and is not resident in the United Kingdom for the purposes of United Kingdom tax; and a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in the Federation if its business is managed and controlled in the Federation.

(*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 the Federation, as the context requires.

(*i*) The terms "United Kingdom enterprise" and "Federal 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 the Federation; and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Federal enterprise, as the context requires.

(*j*) The term "industrial or commercial enterprise or undertaking" includes an enterprise or undertaking engaged in mining, agricultural or pastoral activities, or in the business of banking, insurance, life insurance or dealing in investments, and the term "industrial or commercial profits" includes profits from such activities or business and also includes rents or royalties in respect of cinematograph films but does not include income in the form of dividends, interest, rents, royalties (other than rents or royalties in respect of cinematograph films), management charges or remuneration for personal services.

(*k*) The term "permanent establishment", when used with respect to an enterprise of one of the territories, means a branch, management, mine, farm or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—

(i) 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 dealings in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.

(ii) The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

(iii) The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) Where under this Agreement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Agreement in the first-mentioned territory shall apply only to the amount so remitted or received.

(3) The terms "United Kingdom tax" and "Federation tax", as used in this Agreement, do not include any tax or other amount payable in the United Kingdom or the Federation which is payable in respect of any default or omission in relation to the taxes which are the subject of this Agreement or which represents a penalty imposed under the law of the United Kingdom or the Federation relating to those taxes.

(4) In the application of the provisions of the present 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 the present Agreement.

ARTICLE III

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

(2) The industrial or commercial profits of a Federal enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or

business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein—

(*a*) there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive in that other territory if it were an independent 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; but,

(*b*) subject to the provisions of sub-paragraph (*a*), no profits derived from sources outside that other territory shall be attributed to that permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

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

(*c*) 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

Notwithstanding the provisions of Articles III and IV, profits which a resident of one of the territories derives from operating ships (other than ships operating wholly on inland waters) or aircraft shall be exempt from tax in the other territory.

ARTICLE VI

(1) Dividends paid by a company resident in one of the territories to a resident of the other territory who is subject to tax in that other territory in respect thereof and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from any tax in that first-mentioned territory which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(2) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, the Government of that other territory shall not impose any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

ARTICLE VII

(1) Any interest or royalty 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 and not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt

from tax in that first-mentioned territory; but no exemption shall be allowed under this Article in respect of any interest or royalty paid by a company to a company which controls, directly or indirectly, more than one-half of the entire voting power in the paying company.

(2) In this Article the term "interest" includes interest on any form of indebtedness, secured or unsecured, and the term "royalty" means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade mark or other like property, but does not include royalties or other amounts paid in respect of the operation of mines or quarries or of other extraction of natural resources or rents or royalties in respect of cinematograph films.

ARTICLE VIII

(1) Remuneration (other than pensions) paid by one of the Contracting Governments to any individual for services rendered to that Contracting Government in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Government if the individual is not ordinarily resident in that territory or is ordinarily resident in that territory solely for the purpose of rendering those services.

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

(*a*) the services to which the pension relates ceased on or after the 3rd September, 1953, and immediately prior to the cessation of those services the remuneration therefor was exempt from tax in that territory (whether under paragraph (1) of this Article or otherwise) or would have been exempt under that paragraph if the present Agreement had been in force at the time when the remuneration was paid, or

(*b*) the services ceased before the said 3rd September, and the pension would have been exempt under any of the following agreements if those agreements had continued to be in force:

(i) the Agreement of 3rd September, 1946, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Southern Rhodesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income(**a**);

(ii) the Arrangement between His Majesty's Government and the Government of Northern Rhodesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income(**b**);

(iii) the Arrangement between His Majesty's Government and the Government of Nyasaland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income(**c**).

(3) The provisions of this Article shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Contracting Governments for purposes of profit.

(4) For the purpose of this Article, the term "Contracting Government" where it applies to the Government of the Federation of Rhodesia and Nyasaland includes the Governments of the Territories constituting the Federation.

ARTICLE IX

(1) An individual who is a resident of the United Kingdom shall be exempt from Federal tax on profits or remuneration in respect of personal (including professional) services performed within the Federation in any year of assessment if—

(*a*) he is present within the Federation for a period or periods not exceeding in the aggregate 183 days during that year, and

(a) S.R. & O. 1946/1886 (Rev. X, p. 507: 1946 I, p. 878).
(b) S.R. & O. 1947/1777 (Rev. X, p. 463: 1947 I, p. 1140).
(c) S.R. & O. 1947/2870 (Rev. X, p. 474: 1947 I, p. 1146).

(*b*) the services are performed for or on behalf of a person resident in the United Kingdom, and

(*c*) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of the Federation shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if—

(*a*) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year, and

(*b*) the services are performed for or on behalf of a person resident in the Federation, and

(*c*) the profits or remuneration are subject to Federal tax.

(3) The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

ARTICLE X

(1) Any pension (other than a pension referred to in Article VIII) and any annuity, derived from sources within the Federation by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Federal tax.

(2) Any pension (other than a pension referred to in Article VIII) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of the Federation and subject to Federal tax in respect thereof, shall be exempt from United Kingdom tax.

(3) 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 consideration of money paid.

ARTICLE XI

The remuneration derived by a professor or teacher who is ordinarily resident in one of the territories, for teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory.

ARTICLE XII

A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by persons in the first-mentioned territory for the purposes of his maintenance, education or training.

ARTICLE XIII

(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, Federal tax payable, whether directly or by deduction, in respect of income from sources within the Federation, shall be allowed as a credit against any United Kingdom tax payable in respect of that income. In addition, where such income is an ordinary dividend paid by a company resident in the Federation, the credit shall take into account the Federal tax (other than tax which has been deducted from the dividend) payable in respect of its profits by the company paying the dividend, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Federal tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate. For the purposes of this paragraph, the term "Federal tax" includes any Territorial surcharge.

(2) Subject to the provisions of the law of the Federation regarding the allowance as a credit against Federal tax of tax payable in a territory outside the Federation, United Kingdom tax payable, whether directly or by deduction, in

respect of income from sources within the United Kindom shall be allowed as a credit against any Federal tax payable in respect of that income. If Federal tax is payable in respect of any such income which consists of an ordinary dividend paid by a company resident in the United Kingdom, the credit shall take into account (in addition to any United Kingdom income tax appropriate to the dividend) any other United Kingdom tax payable by the company in respect of its profits, and where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, any other United Kingdom tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

(3) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall be deemed to be income from sources within that territory, and the services of an individual whose services are wholly or mainly performed in aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

ARTICLE XIV

(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 taxes which are the subject of the present 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 the present Agreement. No information shall be exchanged which would disclose any trade secret or trade process.

(2) As used in this Article, the term " taxation authorities " means the Commissioner of Taxes or his authorised representative in the case of the Federation, and the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom.

ARTICLE XV

The present 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 the Federation as are necessary to give the Agreement the force of law in the United Kingdom and the Federation respectively, and shall thereupon have effect—

(*a*) In the United Kingdom, as respects United Kingdom tax on income or profits which arise on or after the 1st April, 1953, or which arise before that date and are chargeable to Federal tax.

(*b*) In the Federation, as respects Federal tax in respect of the year of assessment beginning on the 1st April, 1953, and subsequent years.

ARTICLE XVI

The present Agreement shall continue in effect indefinitely but either of the Contracting Governments may, on or before the 30th September in any calendar year after the year 1955, give notice of termination to the other Contracting Government and, in such event, the present Agreement shall cease to be effective—

(*a*) In the United Kingdom:

as respects income tax for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

as respects surtax for any year of assessment beginning on or after the 6th April in the calendar year in which such notice is given;

as respects profits tax in respect of the following profits—

(i) profits by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

(ii) other profits being profits by reference to which income tax is not chargeable, but which arise in any chargeable accounting period beginning on or after the 1st April in the next following calendar year or are attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;

(*b*) In the Federation:

as respects Federal tax in respect of any year of assessment beginning on or after the 1st April in the calendar year in which such notice is given.

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

Done at London, in duplicate, on the twenty-fifth day of November, one thousand nine hundred and fifty-five.

For the Government of the United Kingdom:

R. A. Butler.

For the Government of the Federation of Rhodesia and Nyasaland:

G. McC. Rennie.

SECOND SCHEDULE

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF SOUTHERN RHODESIA, THE GOVERNMENT OF NORTHERN RHODESIA AND THE GOVERNMENT OF NYASALAND SUPPLEMENTAL TO THE AGREEMENT OF THE SAME DATE BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATION OF RHODESIA AND NYASALAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME

Whereas the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Rhodesia and Nyasaland have today concluded an agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

And whereas the Governor of Southern Rhodesia with the advice of the Executive Council of Southern Rhodesia (hereinafter called the Government of Southern Rhodesia), the Governor of Northern Rhodesia (hereinafter called the Government of Northern Rhodesia) and the Governor of Nyasaland (hereinafter called the Government of Nyasaland) have approved the terms of this Agreement and have authorised the Governor-General of the Federation of Rhodesia and Nyasaland to sign the same on their behalf;

Now, therefore, the Government of the United Kingdom of Great Britain and Northern Ireland and the Governments of Southern Rhodesia, Northern Rhodesia and Nyasaland have agreed as follows:

ARTICLE I

This Agreement shall come into force on the same date as the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federation of Rhodesia and Nyasaland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

ARTICLE II

The following agreements shall not apply in respect of any income to which the Agreement referred to in Article I applies:—

(*a*) The Agreement dated 3rd September, 1946, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Southern Rhodesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

(*b*) The Arrangement between His Majesty's Government and the Government of Northern Rhodesia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income;

(*c*) The Arrangement between His Majesty's Government and the Government of Nyasaland for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income.

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

Done at London, in duplicate, on the twenty-fifth day of November, one thousand nine hundred and fifty-five.

For the Government of the United Kingdom:

R. A. Butler.

For the Government of Southern Rhodesia, the Government of Northern Rhodesia and the Government of Nyasaland:

G. McC. Rennie.

EXPLANATORY NOTE

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

Before the establishment of the Federation of Rhodesia and Nyasaland in 1953, arrangements for the avoidance of double taxation were in force between the United Kingdom and each of the constituent territories of the Federation. With the establishment of the Federation the changed constitutional position made it necessary for a new agreement to be negotiated between the Governments of the United Kingdom and the Federation. This Agreement, which is set out in the First Schedule to this Order, follows in the main the previous arrangements in the separate territories. It provides that certain classes of income derived from one country by a resident of the other country are (subject to certain conditions) to be exempt from tax in the former country; these classes are shipping and air transport profits, certain trading profits not arising through a "permanent establishment", interest, patent and copyright royalties, pensions other than Government pensions, purchased annuities and earnings of temporary business visitors. Dividends are to be exempt from any tax which is additional to the tax charged on the profits represented by the dividend. Government salaries and pensions are normally to be taxed by the paying Government only; special provision is made to continue the same tax treatment as hitherto for those pensioners of the constituent territories who retired before the Federation came into being. The remuneration of visiting teachers and payments for the education and maintenance of visiting students are (subject to certain conditions) to be exempt in the country visited. Exemption from tax in the Federation includes exemption from any Territorial surcharge.

Where income continues to be taxable in both countries, credit is to be given by the country of the taxpayer's residence for tax payable in the country of origin of the income.

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

The Agreement which, in accordance with the terms of the supplemental Agreement which is set out in the Second Schedule, will supersede the existing Agreement and Arrangements with the constituent territories, is expressed to take effect from 1st April, 1953, the date on which the Federal Income Tax system came into force.