STATUTORY INSTRUMENTS

1974 No. 1271

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Gilbert and Ellice Islands Colony) Order 1974

Laid before the House of Commons in draft

Made - - - 25th July 1974

At the Court at Buckingham Palace, the 25th day of July 1974

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(2) 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) (Gilbert and Ellice Islands Colony) Order 1974.

2. It is hereby declared—

(*a*) that the arrangements specified in the Supplementary Arrangement set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Gilbert and Ellice Islands Colony) Order 1950(**c**) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Gilbert and Ellice Islands Colony) Order 1968(**d**) have been made with the Government of the Gilbert and Ellice Islands Colony 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 the Gilbert and Ellice Islands Colony; and

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

N. E. Leigh.

(**a**) 1970 c. 10.
(**b**) 1972 c. 41.
(**c**) S.I. 1950/750 (1950 I, p. 1036).
(**d**) S.I. 1968/309 (1968 I, p. 937).

SCHEDULE

SUPPLEMENTARY ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF THE GILBERT AND ELLICE ISLANDS COLONY TO AMEND THE EXISTING ARRANGEMENT MADE IN 1950 FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, AS MODIFIED BY THE ARRANGEMENT MADE IN 1968.

1. The Arrangement made in 1950 between His Majesty's Government and the Government of the Gilbert and Ellice Islands Colony for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income as modified by the Arrangement made in 1968 (hereinafter referred to as "the existing Arrangement") shall be amended—

(*a*) by the substitution for Paragraph 6 of the following new Paragraph—

"6.—(1) (*a*) Dividends paid by a company which is a resident of the United Kingdom to a resident of the Colony may be taxed in the Colony.

(*b*) Where a resident of the Colony is entitled to a tax credit in respect of such a dividend under sub-paragraph (2) of this Paragraph 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 paid by a company which is a resident of the United Kingdom to a resident of the Colony who is subject to tax in the Colony on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(2) A resident of the Colony who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (3) of this Paragraph and provided he is subject to tax in the Colony on those 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) Sub-paragraph (2) of this Paragraph shall not apply where the recipient 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 purposes of this sub-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 paid by a company which is a resident of the Colony to a resident of the United Kingdom who is subject to tax in the United Kingdom in respect thereof shall be exempt from any tax in the Colony which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(5) The term "dividends" as used in this Paragraph means income from shares, or any other item 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 the company.

(6) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then sub-paragraphs (1) and (2) or, as the case may be, sub-paragraph (4) of this Paragraph 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 sub-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 sub-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 Paragraph.

(7) The provisions of sub-paragraphs (1) and (2) or, as the case may be, sub-paragraph (4) of this Paragraph 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 a business carried on through that permanent establishment. In such a case the provisions of Paragraph 3 shall apply.

(8) 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."

(*b*) by the addition immediately after sub-paragraph (1) of Paragraph 13 of the following new sub-paragraph—

"(1A) For the purposes of sub-paragraph (1) of this Paragraph, the term "Colonial tax payable" shall be deemed to include any amount which would have been payable as Colonial tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under;

(*a*) Section 10 of the Income Tax Ordinance, 1972, so far as it was in force on, and has not been modified since, the date when this Supplementary Arrangement came into force, or has been modified only in minor respects so as not to affect its general character; and except to the extent that it has the effect of exempting or relieving a source of income for a period in excess of 10 years; or

(*b*) any other provision which may subsequently be made granting exemption or reduction of tax which is agreed by the taxation authorities of the United Kingdom and the Colony to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character."

2. This Supplementary Arrangement, which shall form an integral part of the existing Arrangement, shall enter into force when the last of all such things shall have been done in the United Kingdom and the Colony as are necessary to give the Supplementary Arrangement the force of law in the United Kingdom and the Colony respectively and shall thereupon have effect—

(*a*) as respects Paragraph 1(*a*), in relation to dividends paid on or after 6th April 1973; and

(*b*) as respects Paragraph 1(*b*)

(i) in relation to United Kingdom income tax, for any year of assessment beginning on or after 6th April 1973; and

(ii) in relation to United Kingdom corporation tax, for any financial year beginning on or after 1st April 1973.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Supplementary Arrangement scheduled to this Order makes two amendments to the Arrangement made in 1950 with the Gilbert and Ellice Islands Colony, as amended by the Arrangement made in 1968.

The first follows from the introduction of the new United Kingdom corporation tax system which, so far as it relates to the tax treatment of dividends paid by a United Kingdom company to an overseas shareholder, came into operation on 6th April 1973. The Supplementary Arrangement provides that where a United Kingdom company pays a dividend to a resident of the Gilbert and Ellice Islands Colony other than a company which controls 10 per cent or more 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. Dividends paid by a company which is a resident of the Gilbert and Ellice Islands Colony to a resident of the United Kingdom will continue to be exempt from any tax in the Colony which is chargeable on dividends in addition to the tax chargeable in respect of the profits or income of the company.

The second amendment provides for double taxation relief to be given by the United Kingdom for tax which would have been payable in the Gilbert and Ellice Islands Colony but for relief granted under certain provisions of Gilbert and Ellice Islands law in order to encourage development.

The Supplementary Arrangement is to take effect in the United Kingdom for 1973/74 and subsequent years.

SI 1974/1271
ISBN 0-11-041271-0

