# 1962 No. 639

# INCOME TAX

## The Double Taxation Relief (Taxes on Income) (Malta) Order, 1962

*Laid before the House of Commons in draft*
*Made - - - - 28th March,* 1962

At the Court at Buckingham Palace, the 28th day of March, 1962

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 section seventeen of the Finance Act, 1961(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) (Malta) Order, 1962.

2. It is hereby declared—

(*a*) that the arrangements specified in the Arrangement set out in the Schedule to this Order have been made with the Government of Malta with a view to affording relief from double taxation in relation to income tax or profits tax and taxes of a similar character imposed by the laws of Malta ; and

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

*W. G. Agnew.*

### SCHEDULE

ARRANGEMENT BETWEEN HER MAJESTY'S GOVERNMENT AND THE GOVERNMENT OF MALTA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

1.—(1) The taxes which are the subject of this Arrangement are:—

(*a*) In the United Kingdom (and hereinafter referred to as "United Kingdom tax"):

The income tax (including surtax) and the profits tax.

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (b) 9 & 10 Eliz. 2. c. 36.

(*b*) In the Island of Malta (and hereinafter referred to as "Malta tax"):

The income tax (including surtax).

(2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Malta after this Arrangement has come into force.

2.—(1) In this Arrangement, unless the context otherwise requires:

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

(*b*) The term "Malta" means the Island of Malta and its Dependencies.

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

(*d*) The term "tax" means United Kingdom tax or Malta 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 term "resident of the United Kingdom" means—

(i) any company whose business is managed and controlled in the United Kingdom;

(ii) any other person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Malta for the purposes of Malta tax.

(*h*) The term "resident of Malta" means—

(i) any company whose business is managed and controlled in Malta;

(ii) any other person who is resident in Malta for the purposes of Malta tax and not resident in the United Kingdom for the purposes of United Kingdom tax.

(*i*) 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 Malta, as the context requires.

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

(*k*) The term "industrial or commercial profits" includes rentals in respect of cinematograph films.

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

(ii) A 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 (1) (*l*) (v) applies—shall be deemed to be a permanent establishment in the first-mentioned territory if he has, and habitually exercises in that 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.

(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.

(2) Where this Arrangement provides that income from a source in one of the territories shall be exempt from tax in that territory if (with or without other conditions) it is subject to tax in the other territory, and under the law in force in that other territory the said income is subject to tax by reference to the amount thereof which is remitted to or received in that other territory and not by reference to the full amount thereof, then the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to so much of the income as is remitted to or received in the other territory.

(3) In the application of the provisions of this Arrangement by the United Kingdom or Malta, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, Malta, relating to the taxes which are the subject of this Arrangement.

3.—(1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Malta tax unless the enterprise is engaged in trade or business in Malta through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by Malta but only on so much of them as is attributable to that permanent establishment: provided that nothing in this paragraph shall affect any provisions of the law of Malta regarding the taxation of income from the business of insurance.

(2) The industrial or commercial profits of a Malta 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: provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the taxation of income from the business of insurance.

(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, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive from its activities 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.

(4) No portion of any profits arising to 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 goods or merchandise within that other territory by the enterprise.

4. 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.

5. Notwithstanding the provisions of paragraphs 3 and 4, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

6.—(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 does not carry on a 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, there shall not be imposed in that other territory 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, whether or not those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

7.—(1) Any 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 does not carry on a 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 paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph 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 a royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

(3) Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory who does not carry on a trade or business in the first-mentioned territory through a permanent

establishment situated therein shall be exempt from tax in that first-mentioned territory.

8.—(1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

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

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

(*a*) he is present within Malta 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 United Kingdom, and

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

(2) An individual who is a resident of Malta 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 Malta, and

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

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

10.—(1) Any pension (other than a pension paid by the Government of Malta for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within Malta by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Malta tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Malta and subject to Malta 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 return for adequate and full consideration in money or money's worth.

11. A professor or teacher from one of the territories, who receives remuneration 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 in respect of that remuneration.

12. 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.

13.—(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, Malta tax payable, whether directly or by deduction, in respect of income from sources within Malta shall be allowed as a credit against any United Kingdom tax payable in respect of that income. For the purposes of this sub-paragraph "Malta tax payable" shall be deemed to include any amount which would have been payable as Malta tax for any year but for an exemption granted for that year or any part thereof under the provisions of Part IV of the Aids to Industries Emergency Ordinance, 1959, so far as those provisions were in force on, and have not been modified since, the date when this Arrangement came into force, or have been modified only in minor respects so as not to affect their general character.

(2) Subject to the provisions of the law of Malta regarding the allowance as a credit against Malta tax of tax payable in a territory outside Malta, United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a credit against any Malta tax payable in respect of that income. Where such income is 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) the United Kingdom profits 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, the profits 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 paragraph 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 ships or aircraft operated by a resident of one of the territories shall be deemed to be performed in that territory.

14.—(1) The taxation authorities of the United Kingdom and Malta shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement 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 Arrangement. 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 Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

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

15. This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and Malta as are necessary to give the Arrangement the force of law in the United Kingdom and Malta respectively, and shall thereupon have effect—

(*a*) in the United Kingdom:

as respects income tax (including surtax) for any year of assessment beginning on or after the 6th April, 1962;

as respects profits tax in respect of the following profits—

(i) profits by reference to which income tax is, or but for the present Arrangement would be, chargeable for any year of assessment beginning on or after the 6th April, 1962;

(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, 1962, 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 Malta:

as respects income tax (including surtax) for the year of assessment beginning on the first of January, 1962, and subsequent years.

16. This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30th June in any calendar year after the year 1964, give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective—

(*a*) in the United Kingdom:

as respects income tax (including surtax) 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 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 Malta:

as respects income tax (including surtax) for any year of assessment beginning on or after the first day of January in the calendar year next following that in which such notice is given.

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## EXPLANATORY NOTE

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

Under the Arrangement with Malta which is scheduled to this Order, 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, patent and copyright royalties, pensions other than Government pensions, purchased annuities and earnings of temporary business visitors. Government salaries are normally to be taxed by the paying Government only. Remuneration of visiting professors and teachers is to be exempt in the country visited.

Dividends are to be exempt from any tax which is additional to the tax charged on the profits represented by the dividend.

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

United Kingdom tax for tax which would have been payable in Malta but for an exemption from Malta tax, under the provisions of Part IV of the Malta Aids to Industries Emergency Ordinance, 1959, (which authorise the exemption of trading profits of industrial undertakings from Malta tax in certain circumstances for a period of not more than ten years, and the exemption from that tax of sums representing profits so exempted which are distributed during the tax holiday period or within two years thereafter).

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

The Arrangement is expressed to take effect for the fiscal year 1962-63.