1962 No. 2788

INCOME TAX

The Double Taxation Relief (Taxes on Income) (South West Africa) Order 1962

Laid before the House of Commons in draft
Made - - - - 19th December 1962

At the Court at Buckingham Palace, the 19th day of December 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 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, in exercise of the powers conferred upon Her by subsection (1) of the said section 347 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) (South West Africa) Order 1962.

2. It is hereby declared—

(*a*) that the arrangements specified in the Schedule to this Order for the extension to South West Africa of the arrangements specified in the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (South Africa) Order 1962(b) have been made with the Government of the Republic of South Africa on behalf of the Administration of the territory of South West Africa 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 South West Africa; and

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

W. G. Agnew.

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

(b) S.I. 1962/2352 (1962 III, p. 3264).

SCHEDULE

1. The provisions of the Convention between the Government of the Republic of South Africa and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income signed on the Twenty-eighth day of May, One thousand Nine hundred and Sixty-two, at Cape Town shall apply—

(*a*) as if the Contracting Parties were the Government of the United Kingdom and the Administration of the territory of South West Africa;

(*b*) as if a reference to South Africa were a reference to the territory of South West Africa, unless the context otherwise requires;

(*c*) as if the taxes concerned in the case of the territory of South West Africa were the normal tax, the super tax, the non-resident shareholders' tax, the undistributed profits tax and the diamond profits tax;

(*d*) as if—

(i) the reference in paragraphs (1) and (3) of Article VI (as read with sub-paragraph (*b*) above) to dividends paid by a company which is a resident of the territory of South West Africa included a reference to any amount which, under the law of that territory relating to the taxation of the income subject to super tax of private companies, is apportioned out of the income subject to super tax of any private company which is a resident of or carries on business in the territory of South West Africa;

(ii) the reference in the said paragraphs to the recipient of the dividend or the company paying the dividend, as the case may be, included a reference, respectively, to the shareholder to whom the amount is apportioned as aforesaid or to the private company out of whose income subject to super tax that amount is so apportioned; and

(iii) the provisions of sub-paragraph (*a*) of paragraph (1) of the said Article applied also to so much of any amount apportioned out of the income subject to super tax of any private company which is a resident of or carries on business in the territory of South West Africa to any company, which is a resident of the Republic of South Africa (hereinafter referred to as "the South African company") and more than 50 per cent of the entire voting power in which is controlled directly or indirectly by a company which is a resident of the United Kingdom, as would have been apportionable to the last mentioned company if the law of the territory of South West Africa relating to the apportionment of the income subject to super tax of private companies had applied to the South African company; and

(*e*) as if paragraph (4) of Article XI were omitted.

2. The present extension shall come into force when the last of those measures shall have been taken in the United Kingdom and the territory of South West Africa necessary to give the extension the force of law in those countries and shall thereupon have effect—

(*a*) in the United Kingdom:

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

(ii) as respects surtax, for any year of assessment beginning on or after 6th April, 1961; and

(iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January, 1962, and for the unexpired portion of any chargeable accounting period current at that date;

(*b*) in the territory of South West Africa:

(i) as respects normal tax, super tax and undistributed profits tax, for any year of assessment ending after 30th June, 1962;

(ii) as respects non-resident shareholders' tax, on dividends declared after 30th June, 1962, where the tax is payable on dividends, and for any year of assessment ending after that date, where the tax is payable on apportioned income; and

(iii) as respects diamond profits tax, for any year of assessment ending on or after 31st December, 1962.

3. The present extension shall remain in force indefinitely and shall continue to remain in force notwithstanding that the Convention may have been terminated by either the Government of the Republic of South Africa or the Government of the United Kingdom of Great Britain and Northern Ireland in accordance with Article XXVI thereof. Either the Government of the Republic of South Africa or the Government of the United Kingdom of Great Britain and Northern Ireland may, however, on or before 30th June in any calendar year not earlier than the year 1966, give to the other through the diplomatic channel written notice of termination of the present extension, and in such event it shall cease to have effect—

(*a*) in the United Kingdom:

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

(ii) as respects surtax, for any year of assessment beginning on or after 6th April in the calendar year in which the notice is given; and

(iii) as respects profits tax, for any chargeable accounting period beginning on or after 1st January in the calendar year next following that in which the notice is given and for the unexpired portion of any chargeable accounting period current at that date;

(*b*) in the territory of South West Africa:

(i) as respects normal tax, super tax and undistributed profits tax, for any year of assessment ending after 30th June in the calendar year next following that in which the notice is given;

(ii) as respects non-resident shareholders' tax, on dividends declared after 30th June in the calendar year next following that in which the notice is given, where the tax is payable on dividends, and for any year of assessment ending after that date, where the tax is payable on apportioned income; and

(iii) as respects diamond profits tax, for any year of assessment ending on or after 31st December in the calendar year next following that in which the notice is given.

EXPLANATORY NOTE

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

The Double Taxation Relief (Taxes on Income) (South Africa) Order 1962 (S.I. 1962/2352) provides for the operation of a Convention dated 28th May 1962 for the relief of double taxation between the United Kingdom and South Africa. Article XXIV of that Convention provides inter alia that the Convention may be extended, either in its entirety or with modifications, by means of an Exchange of Notes between the Contracting Parties, to any territory other than South Africa for whose international relations South Africa is responsible.

This Order gives effect to the extension of the Convention, with minor modifications, to South West Africa in accordance with Notes which were exchanged between the Contracting Parties on 8th August 1962.

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