1966 No. 1188

INCOME TAX

The Double Taxation Relief (Taxes on Income) (U.S.A.) Order 1966

Laid before the House of Commons in draft

Made - - - - 20th September 1966

At the Court at Balmoral, the 20th day of September 1966

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, as amended by section 39 and section 64 of the Finance Act 1965(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) (U.S.A.) Order 1966.

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 United States of America with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of the United States of America varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (U.S.A.) Order 1946(c), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (U.S.A.) Order 1955(d) and in the Schedule to the Double Taxation Relief (Taxes on Income) (U.S.A.) Order 1958(e); 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) 1965 c. 25.
(c) S.R. & O. 1946/1327 (Rev. X, p. 526: 1946 I, p. 885).
(d) S.I. 1955/162 (1955 I, p. 1013). (e) S.I. 1958/1751 (1958 I, p. 1274).

SCHEDULE

SUPPLEMENTARY PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA, AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON THE 16th APRIL, 1945, AS MODIFIED BY THE SUPPLEMENTARY PROTOCOLS SIGNED AT WASHINGTON ON THE 6th JUNE, 1946, THE 25th MAY, 1954, AND THE 19th AUGUST, 1957

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

Desiring to conclude a further Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on the 16th April, 1945, as modified by the Supplementary Protocol signed at Washington on the 6th June, 1946, by the Supplementary Protocol signed at Washington on the 25th May, 1954, and the Supplementary Protocol signed at Washington on the 19th August, 1957, (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

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

"ARTICLE I

(1) The taxes which are the subject of the present Convention are:

(*a*) In the case of the United States of America: The Federal income taxes, including surtaxes (hereinafter referred to as 'United States tax');

(*b*) In the case of the United Kingdom of Great Britain and Northern Ireland: The income tax (including surtax), the corporation tax, and the capital gains tax (hereinafter referred to as 'United Kingdom tax').

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequent to the date of signature of the present Convention or by the government of any territory to which the present Convention is extended under Article XXII."

ARTICLE 2

The following new paragraph shall be added at the end of Article II of the Convention:

"(4) Where under Articles VI, VII and VIII of the present Convention income from a source in one of the territories is relieved from tax in that territory, and, under the law in force in the other territory an individual, in respect of 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 relief to be allowed under those Articles of the present Convention in the first-mentioned territory shall apply only to so much of the income as is remitted to or received in the other territory."

ARTICLE 3

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

"ARTICLE III

(1) Industrial or commercial profits of an enterprise of one of the Contracting Parties shall be exempt from tax by the other Party unless the enterprise is engaged in trade or business in the territory of such other Party through a permanent establishment situated therein. If such enterprise is so engaged, tax may be imposed by such other Party on the industrial or commercial profits of the enterprise but only on so much of them as are directly or indirectly attributable to the permanent establishment.

(2) Where an enterprise of one of the Contracting Parties is engaged in trade or business in the territory of the other Contracting Party through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive 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.

(3) In determining the industrial or commercial profits of an enterprise of one of the Contracting Parties which are taxable in the territory of the other Contracting Party in accordance with paragraphs (1) and (2), there shall be allowed as deductions all expenses (including executive and general administrative expenses) which would be deductible if the permanent establishment were an independent enterprise and which are reasonably connected with the profits so taxable, whether incurred in the territory of the Contracting Party in which the permanent establishment is situated or elsewhere.

(4) No profits shall be deemed to be derived by an enterprise of either Contracting Party merely by reason of the purchase of goods or merchandise by a permanent establishment of the enterprise, or by the enterprise itself, for the account of the enterprise.

(5) The term 'industrial or commercial profits' means income derived by an enterprise from the active conduct of a trade or business, including income derived by an enterprise from the furnishing of services of employees or other personnel, but does not include income dealt with in Article VI, excluding paragraphs (4) and (5) (dividends), Article VII, excluding paragraph (3) (interest), Article VIII, excluding paragraph (3) (royalties), and Article XIV, excluding paragraph (3) (capital gains) nor does it include income received by an individual as compensation for personal (including professional) services."

ARTICLE 4

Article VI of the Convention having been terminated by notice given on the 30th June, 1965, under paragraph (3) of that Article, the following new Article shall be inserted in place thereof:

"ARTICLE VI

(1) The rate of the United States tax on dividends beneficially owned by a resident of the United Kingdom which are derived by such a resident from a United States corporation, or are otherwise treated as being from sources within the United States, shall not exceed 15 per cent of the gross amount of the dividends.

(2) The rate of United Kingdom tax on dividends beneficially owned by a resident of the United States which are derived by such a resident from a corporation which is a resident of the United Kingdom, or are otherwise treated as being from sources within the United Kingdom, shall not exceed 15 per cent of the gross amount of the dividends.

(3) Subject to the provisions of paragraph (5) of Article VII and of paragraph (4) of Article VIII of the present Convention:

(*a*) The term 'dividends' in the case of the United Kingdom includes any item which under the law of the United Kingdom is treated as a distribution of a company except that this term does not include any redeemable share capital or security issued by a corporation in respect of shares in the corporation otherwise than wholly for new consideration, or such part of any redeemable share capital or security so issued as is not properly referable to new consideration.

(*b*) The term 'dividends' in the case of the United States includes any item which under the law of the United States is treated as a distribution out of earnings and profits.

(4) The provisions of paragraph (1) of this Article shall not apply if the recipient of the dividends, being a resident of the United Kingdom and not

a corporation, has in the United States a permanent establishment and the holding giving rise to the dividends is effectively connected with such permanent establishment.

(5) The provisions of paragraph (2) of this Article shall not apply if the recipient of the dividends, being a resident of the United States, has in the United Kingdom a permanent establishment and the holding giving rise to the dividends is effectively connected with a trade carried on through such perment establishment and, in the case of a corporation, the trade is such that a profit on the sale of the holding would be a trading receipt.

(6) Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any year after the year 1965, and in such event paragraph (1) of this Article shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) of this Article shall cease to be effective as to United Kingdom tax on and after the sixth day of April, in the year next following that in which such notice is given."

ARTICLE 5

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

"ARTICLE VII

(1) Interest (on bonds, securities, debentures, or on any other form of indebtedness) derived and beneficially owned by a resident of the United Kingdom shall be exempt from tax by the United States.

(2) Interest (on bonds, securities, debentures, or on any other form of indebtedness) derived and beneficially owned by a resident of the United States shall be exempt from tax by the United Kingdom.

(3) Paragraphs (1) and (2) of this Article shall not apply if the recipient of the interest, being a resident of the territory of one of the Contracting Parties, has in the territory of the other Contracting Party a permanent establishment and the indebtedness giving rise to the interest is effectively connected with such permanent establishment.

(4) Subject to paragraph (5) of this Article, the provisions of paragraphs (1) and (2) of this Article shall not apply to any payment of interest which under the law of either Contracting Party is treated as a distribution.

(5) Any provision in the law of either Contracting Party relating only to interest paid to a non-resident corporation shall not operate so as to require such interest paid to a resident of the other Contracting Party to be treated as a distribution by the Corporation paying such interest. The preceding sentence shall not apply to interest paid to a corporation of one Contracting Party in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the territory of the other Contracting Party.

(6) Where, owing to a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the interest paid exceeds the amount which would have been agreed upon by the payer and recipient in the absence of such relationship, the provisions of this Article shall only apply to the last-mentioned amount."

ARTICLE 6

The following new Article shall be inserted immediately after Article VII of the Convention:

"ARTICLE VII A

Neither Article VI nor Article VII of the present Convention shall apply if the recipient of the dividend or interest is exempt from tax on such income in the territory of the Contracting Party in which it is resident, and either—

(*a*) in the case of a dividend to which Article VI applies, such recipient owns 10 per cent or more of the class of shares in respect of which the

dividend is paid and the dividend is paid in such circumstances that, if the recipient were a resident of the United Kingdom exempt from United Kingdom tax, the exemption would be limited or removed; or

(*b*) in the case of interest to which Article VII applies, such recipient sells (or makes a contract to sell) the holding from which such interest is derived within three months of the date such recipient acquired such holding."

ARTICLE 7

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

"ARTICLE VIII

(1) Royalties derived and beneficially owned by a resident of the United Kingdom shall be exempt from tax by the United States.

(2) Royalties derived and beneficially owned by a resident of the United States shall be exempt from tax by the United Kingdom.

(3) Paragraphs (1) and (2) of this Article shall not apply if the recipient of the royalty, being a resident of the territory of one of the Contracting Parties, has in the territory of the other Contracting Party a permanent establishment and the right or property giving rise to the royalties is effectively connected with such permanent establishment.

(4) Royalties paid by a corporation of one Contracting Party to a resident of the other Contracting Party shall not be treated as a distribution by such corporation. The preceding sentence shall not apply to royalties paid to a corporation of one Contracting Party where (*a*) the same persons participate directly or indirectly in the management or control of the corporation paying the royalties and the corporation deriving the royalties, and (*b*) more than 50 per cent of the voting power in the corporation deriving the royalties is controlled, directly or indirectly, by a person or persons resident in the territory of the other Contracting Party.

(5) The term 'royalties' as used in this Article:

(*a*) means any royalties, rentals or other amounts paid as consideration for the use of, or the right to use, copyrights of literary, artistic or scientific works (including motion picture films, or films or tapes for radio or television broadcasting), patents, designs or models, plans, secret processes or formulae, trade-marks or other like property or rights, or for industrial, commercial or scientific equipment, or for knowledge, experience or skill (know-how), and

(*b*) shall include gains derived from the sale or exchange of any right or property giving rise to such royalties.

(6) Where, owing to a special relationship between the payer and the recipient, or between both of them and some other person, the amount of the royalties paid exceeds the amount which would have been agreed upon by the payer and the recipient in the absence of such relationship, the provisions of this Article shall only apply to the last-mentioned amount."

ARTICLE 8

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

"ARTICLE IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 per cent: Provided that any such resident may elect for any taxable year to be subject to United States tax on such income on a net basis as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rentals from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (*a*) a resident of the United States, (*b*) subject to United States tax with respect to such royalties and rentals, and (*c*) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax."

ARTICLE 9

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

"ARTICLE XIII

(1) The United States, in determining United States tax in the case of its citizens, residents or corporations may, regardless of any other provision of this Convention, include in the basis upon which such tax is imposed all items of income taxable under the revenue laws of the United States as if this Convention had not come into effect. Subject to the provisions of the law of the United States regarding the allowance as a credit against United States tax of tax payable in a territory outside the United States(which shall not affect the general principle hereof), the United States shall, however, allow to a citizen, resident or corporation, as a credit against its taxes, the appropriate amount of United Kingdom income tax paid and, in the case of a United States corporation owning at least 10 per cent of the voting power of a corporation resident in the United Kingdom, shall allow credit for the appropriate amount of United Kingdom tax paid by the corporation paying such dividend with respect to the profits out of which such dividend is paid, if the recipient of such dividend includes in its gross income for the purposes of United States tax the amount of such United Kingdom tax. For this purpose, the recipient of any interest or royalty paid by an individual who is resident in the United Kingdom and the recipient of any dividend paid by a corporation which is resident in the United Kingdom shall be considered to have paid the United Kingdom income tax legally deducted from such interest, royalty or dividend payment by the person by or through whom payment thereof is made (to the extent that it is a tax chargeable in accordance with the present Convention) if such recipient elects to include in his gross income for purposes of United States tax the amount of such United Kingdom tax. The appropriate amount of United Kingdom tax which shall be allowed as a credit under this paragraph shall be based upon the amount of United Kingdom tax paid but shall not exceed that portion of the United States tax which net income from sources within the United Kingdom bears to the entire net income.

(2) 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 (which shall not affect the general principle hereof),

(*a*) United States tax payable under the laws of the United States and in accordance with the present Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United States (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the United States tax is computed;

(*b*) In the case of a dividend paid by a company which is a resident of the United States to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the United States company, the credit shall take into account (in addition to any United States tax creditable under (*a*)) the United States tax payable by the company in respect of the profits out of which such dividend is paid.

(3) For the purposes of this Article, compensation, profits, emoluments and other remuneration for personal (including professional) services shall be deemed to be income from sources within the territory of the Contracting Party where such services are performed.

(4) With respect to dividends paid prior to the 6th April, 1966, the United States, in allowing credit in accordance with the terms of paragraph (1) of Article XIII as in effect prior to the amendments made thereto by the Supplementary Protocol signed at London on the 17th March, 1966 to a recipient of a dividend from a corporation which is resident in the United Kingdom, shall continue, to the same extent as prior to the 6th April, 1964, to treat as the United Kingdom tax appropriate to such dividend, the United Kingdom income tax which the person paying such dividend is required to deduct from such dividend except that there shall not be considered to be any United Kingdom tax appropriate to a dividend with respect to which a United States corporation claims, under Section 902 of the Internal Revenue Code, credit for taxes paid or deemed to be paid by the corporation paying such dividend if, and to the extent that, under the applicable provisions of the Internal Revenue Code such dividend is considered paid out of profits of a financial year of the corporation paying such dividend to which the United Kingdom corporation tax applies."

ARTICLE 10

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

"ARTICLE XIV

(1) A resident of the United Kingdom shall be exempt from United States tax on gains from the sale or exchange of capital assets.

(2) A resident of the United States shall be exempt from United Kingdom tax on chargeable gains accruing to him on the disposal of assets.

(3) Paragraph (1) or paragraph (2) of this Article shall not apply if the person deriving the gain has a permanent establishment in the United States, for purposes of paragraph (1), or the United Kingdom, for purposes of paragraph (2) and the gain is derived from an asset which is effectively connected with such permanent establishment.

(4) Paragraph (1) of this Article shall not apply if the person deriving the gain is an individual who is a resident of the United Kingdom and who is present in the United States for a period equal to or exceeding an aggregate of 183 days during the taxable year."

ARTICLE 11

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

"ARTICLE XV

Dividends and interest paid by a corporation of one Contracting Party shall be exempt from tax by the other Contracting Party except where the recipient is a citizen, resident, or corporation of that other Contracting Party. This exemption shall not apply if the corporation paying such dividend or interest is a resident of the other Contracting Party."

ARTICLE 12

The following new Article shall be inserted immediately after Article XVI of the Convention:

"ARTICLE XVI A

In determining for the purpose of United Kingdom tax whether a company is a close company, the term 'recognized stock exchange' shall include any exchange registered with the Securities and Exchange Commission of the United States as a national securities exchange."

ARTICLE 13

The following new Article shall be inserted immediately after Article XIX of the Convention:

"ARTICLE XIX A

(1) Each of the Contracting Parties will endeavour to collect on behalf of the other Contracting Party, such amounts as may be necessary to ensure that relief granted by the present Convention from taxation imposed by such other Contracting Party does not enure to the benefit of persons not entitled thereto. The United Kingdom will be regarded as fulfilling this obligation by the continuation of its existing arrangements for ensuring that relief from taxation imposed by the laws of the United States does not enure to the benefit of persons not entitled thereto.

(2) Paragraph (1) of this Article shall not impose upon either of the Contracting Parties the obligation to carry out administrative measures which are of a different nature from those used in the collection of its own tax, or which would be contrary to its sovereignty, security, or public policy. In determining the administrative measures to be carried out each Contracting Party may take into account the administrative measures and practices of the other Contracting Party in recovering taxes on behalf of the first-mentioned Contracting Party.

(3) The competent authorities of the Contracting Parties shall consult with each other for the purpose of co-operating and advising in respect of any action to be taken in implementing this Article."

ARTICLE 14

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

"ARTICLE XX

(1) The competent authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention 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 Convention. Any information so exchanged shall be treated as secret but may be disclosed to persons (including a court or administrative body) concerned with the assessment, collection, enforcement or prosecution in respect of taxes which are the subject of the present Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

(2) The term 'competent authorities' means, in the case of the United States, the Secretary of the Treasury or his delegate; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorized representative; and, in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Convention applies."

ARTICLE 15

The following new Article shall be inserted immediately after Article XX of the Convention:

"ARTICLE XX A

(1) Where a taxpayer considers that the action of the tax authorities of the Contracting Parties has resulted or will result in taxation contrary to the provisions of the present Convention, he shall be entitled to present his case to the Party of or in which he is a citizen or resident. Should the taxpayer's claim be deemed worthy of consideration, the competent authority of the Party to which the claim is made shall endeavour to come to an agreement with the competent authority of the other Party with a view to a satisfactory adjustment.

(2) The competent authorities of the Contracting Parties may communicate with each other directly to implement the provisions of the present Convention and to assure its consistent interpretation and application. In particular, the

competent authorities may consult together to endeavour to resolve disputes arising out of the application of paragraph (2) of Article III or Article IV, or the determination of the source of particular items of income.

(3) In the United States where the income or profits of an enterprise are adjusted pursuant to Article IV, or paragraph (2) of Article III, or the tax of an enterprise is adjusted as the result of a determination of the source of a particular item of income, taxes shall be imposed on such income or profits, or refund or credit of taxes shall be allowed, in accordance with the agreement reached by the competent authorities respecting such adjustment.

(4) In the United Kingdom, where profits on which a United Kingdom enterprise has been charged to United Kingdom tax are also included in the profits of a United States enterprise and the profits so included are profits which would have accrued to the United States enterprise if the conditions made between each of the enterprises had been those which would have been made between independent enterprises, the amount included in the profits of both enterprises shall be treated for the purpose of Article XIII as income from a United States source of the United Kingdom enterprise and credit shall be given accordingly in respect of the extra United States tax chargeable as a result of the inclusion of the said amount."

ARTICLE 16

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

"ARTICLE XXI

(1) A national of one of the Contracting Parties who is resident in the territory of the other Contracting Party shall not be subjected in that other Contracting Party to more burdensome taxes than is a national of that other Contracting Party who is resident therein.

(2) A permanent establishment which an enterprise of one of the Contracting Parties has in the other Contracting Party shall not be subject in that other Contracting Party to more burdensome taxes than is an enterprise of that other Contracting Party carrying on the same activities. This paragraph shall not be construed as obliging either Contracting Party to grant to residents of the other Contracting Party any personal allowances or deductions which are by its law available only to residents of that former Contracting Party, nor as restricting the right of either Contracting Party to tax in accordance with paragraph (1) or paragraph (2) of Article VI dividends paid to a permanent establishment maintained within its territory by a resident of the other Contracting Party.

(3) A corporation of one of the Contracting Parties, the capital of which is wholly or partly owned by one or more nationals or corporations of the other Contracting Party, shall not be subjected in the former Contracting Party to more burdensome taxes than is a corporation of the former Contracting Party, the capital of which is wholly owned by one or more nationals or corporations of that former Contracting Party.

(4) The term 'nationals' as used in this Article means

(*a*) in relation to the United Kingdom, all British subjects and British protected persons (being individuals), from the United Kingdom or any territory with respect to which the present Convention is applicable by reason of extension made by the United Kingdom under Article XXII; and

(*b*) in relation to the United States, United States citizens, and all individuals under the protection of the United States, from the United States or any territory to which the present Convention is applicable by reason of extension made by the United States under Article XXII.

(5) In this Article the word 'taxes' means taxes of every kind or description, whether national, Federal, state, provincial or municipal."

ARTICLE 17

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

"ARTICLE XXIV

(1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th June in any year after the year 1966, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective:

(*a*) as respects United States tax, for the taxable years beginning on or after the 1st January in the year next following that in which such notice is given;

(*b*) (i) as respects United Kingdom income tax and surtax, for any year of assessment beginning on or after the 6th April in the year next following that in which such notice is given;

(ii) as respects United Kingdom corporation tax, for any financial year beginning on or after the 1st April in the year next following that in which such notice is given; and

(iii) as respects United Kingdom capital gains tax, for any year of assessment beginning on or after the 6th April in the year next following that in which such notice is given.

(2) The termination of the present Convention or any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties."

ARTICLE 18

(1) This Supplementary Protocol shall be ratified and the instruments of ratification shall be exchanged at Washington as soon as possible.

(2) This Supplementary Protocol shall enter into force upon the exchange of instruments of ratification(a) and shall thereupon have effect:

(*a*) in the United Kingdom:

(i) as respects income tax and surtax for any year of assessment beginning on or after the 6th April, 1966;

(ii) as respects corporation tax for any financial year beginning on or after the 1st April, 1964;

(iii) as respects capital gains tax for any year of assessment beginning on or after the 6th April, 1965;

except that the amendments made by Article 9 of this Supplementary Protocol to Article XIII of the Convention shall not apply:

(i) as respects income tax and surtax for any year of assessment beginning before the date of ratification of this Supplementary Protocol in respect of dividends becoming payable by a United States corporation before the said date;

(ii) as respects corporation tax in respect of dividends becoming payable by a United States corporation before the later of the date of ratification of this Supplementary Protocol and the 6th April, 1966.

(*b*) in the United States as respects taxable years beginning on or after the 1st January, 1966, except—

(i) Article 4 of this Supplementary Protocol shall be effective on the 1st January, 1966;

(ii) the amendments made by Article 8 of this Supplementary Protocol to Article IX of the Convention shall have effect as respects taxable years beginning on or after the date of ratification of this Supplementary Protocol;

(a) Instruments of ratification were exchanged on 9th September 1966.

(iii) the amendments made by Article 9 of this Supplementary Protocol to Article XIII of the Convention shall have effect with respect to amounts paid on or after the 6th April, 1966, except that paragraph (4) of Article XIII of the Convention as amended by Article 9 of this Supplementary Protocol shall have effect with respect to amounts paid on or after the 6th April, 1964, and

(iv) the amendments made by Article 10 of this Supplementary Protocol to Article XIV of the Convention shall have effect with respect to gains realized on or after the date of ratification of this Supplementary Protocol.

(3) Where a company resident in the United Kingdom is required to account for income tax for the year beginning on the 6th April, 1966 on any amount by reference to dividends it paid in the year ending on the 5th April, 1966, Article VI of the Convention shall apply to such part of each gross dividend (other than a preference dividend or a part thereof which is paid at a fixed rate) paid in the year ending on the 5th April, 1966 as corresponds to the proportion which the said amount bears to the total of gross dividends (excluding any preference dividend or part thereof which is paid at a fixed rate) paid by the company in the year ending on the 5th April, 1966.

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

Done in duplicate at London, this 17th day of March, 1966.

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

WALSTON.

For the Government of the United States of America:

DAVID K. E. BRUCE.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Supplementary Protocol scheduled to this Order extends the Convention with the United States of America signed on the 16th April 1945, as modified by subsequent Protocols, to United Kingdom corporation tax and capital gains tax, and makes certain other alterations to it.

The principal changes are, first, that the rate of tax on dividends flowing from one country to the other is, in general, not to exceed 15 per cent; and, second, that credit is to be given by one country for tax borne in the other country by the paying company on the profits out of which the dividends are paid only where the recipient of the dividends is a company which holds not less than 10 per cent of the voting power in the paying company.

The Protocol modifies the provisions in the 1945 Convention relating to certain trading profits not arising through a permanent establishment, interest and royalties. In certain circumstances, interest and royalties which would under the general law of one of the countries be treated as a distribution of the paying company are not to be so regarded if they are paid to a resident of the other country. Relief from tax on dividends, interest and royalties (other than mining royalties) in the country of origin will no longer depend on whether the recipient is subject to tax in the other country, but will depend on the income being beneficially owned by a resident of the other country. Where such income is taxed in the other country on the basis of the amount remitted there, the relief is to apply only to the amounts so remitted.

The Protocol gives reciprocal effect to the Article, which formerly applied only to United States tax, relating to taxes on capital gains.

It provides that, in determining whether a United Kingdom company is a close company, a stock exchange registered as a national securities exchange with the Securities and Exchange Commission of the United States will be treated as a recognised stock exchange.

The Protocol expands the Article of the Convention safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and modifies the Article providing for exchange of information between the taxation authorities of the two countries. It includes new Articles providing for consultation between those authorities to assist taxpayers in certain circumstances to claim the benefits of the Convention, and to implement the provisions of the Convention generally. It also includes provision enabling arrangements to be made to prevent relief granted under the Convention from going to persons not entitled to it.

Apart from special rules about the beginning of the new provisions giving relief by way of credit, and certain minor exceptions, the Protocol is to take effect in the United Kingdom for corporation tax and capital gains tax for all years and for income tax and surtax for the fiscal year 1966-67 and subsequent years.