

1968 No. 2034

INCOME TAX

**The Double Taxation Relief (Taxes on Income) (Sweden)
(No. 2) Order 1968***Laid before the House of Commons in draft**Made - - - 20th December 1968*

At the Court at Buckingham Palace, the 20th day of December 1968

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 347(6) 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 section 347(1) of the said Income Tax Act 1952, 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) (Sweden) (No. 2) Order 1968.

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 Kingdom of Sweden 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 Sweden varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) Order 1961(c), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Sweden) Order 1968(d) ; 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.I. 1961/577 (1961 I, p. 1265).

(d) S.I. 1968/1105 (1968 II, p. 3057).

SCHEDULE

SUPPLEMENTARY PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN, AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT LONDON ON 28th JULY, 1960, AS MODIFIED BY THE PROTOCOL SIGNED AT LONDON ON 25th MARCH, 1966

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

Desiring to conclude a Supplementary Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 28th July, 1960, as modified by the Protocol signed at London on 25th March, 1966, (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

Paragraph (1) of Article I of the Convention shall be deleted and replaced by the following:

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

(a) in Sweden (and hereinafter referred to as "Swedish tax"):

- (i) the State income tax, including sailors tax and coupon tax ;
- (ii) the tax on undistributed profits of companies (*ersättningskatt*) ;
- (iii) the tax on distributed income (*utskiftningsskatt*) ;
- (iv) the tax on public entertainers (*bevillningsavgift för vissa offentliga föreställningar*) ;
- (v) the communal income tax (*kommunal inkomstskatt*) ; and
- (vi) the State capital tax ;

(b) in the United Kingdom of Great Britain and Northern Ireland (and hereinafter referred to as "United Kingdom tax"):

- (i) the income tax (including surtax) ;
- (ii) the corporation tax ; and
- (iii) the capital gains tax."

ARTICLE 2

(1) Sub-paragraph (g) (i) of paragraph (1) of Article II of the Convention shall be deleted and replaced by the following:

"(g) (i) the term "resident of the United Kingdom" means any person who is resident in the United Kingdom for the purposes of United Kingdom tax but does not include any individual who is liable to tax in the United Kingdom only if he derives income from sources therein, and the term "resident of Sweden" means any person who is resident in Sweden for the purposes of Swedish tax but does not include any individual who is liable to tax in Sweden only if he derives income from sources therein ; provided that".

(2) Paragraph (2) of Article II of the Convention shall be deleted and replaced by the following:

"(2) Where under this 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 this 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 VII of the Convention shall be deleted and replaced by the following:

"Article VII

(1) Dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed in that other territory.

(2) Subject to paragraph (3) of this Article, dividends paid by a company which is a resident of one of the territories to a resident of the other territory may be taxed in the first-mentioned territory, and according to the law of that territory, but where such dividends are beneficially owned by a resident of the other territory the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the recipient is a company (excluding a partnership) which:

(i) being a resident of Sweden controls directly or indirectly at least 25 per cent of the voting power of the company paying the dividends, or

(ii) being a resident of the United Kingdom controls directly or indirectly at least 25 per cent of the capital of the company paying the dividends;

(b) in all other cases 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) Dividends paid before the date of entry into force of the Supplementary Protocol signed at London on 27th June, 1968, by a company which is a resident of one of the territories to a resident of the other territory who is subject to tax there in respect thereof (or would be so subject to tax there but for a provision in the Convention) shall be exempt from any tax which is chargeable in the first-mentioned territory on dividends in addition to the tax chargeable in respect of the profits or income of the company.

(4) The term "dividends" as used in this Article means income from shares, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation law of the territory of which the company making the distribution is a resident and, in the case of the United Kingdom, includes any item (other than interest or royalties exempt from United Kingdom tax under Article VIII or Article IX of this Convention) which under the law of the United Kingdom is treated as a distribution of a company.

(5) Where the company paying a dividend is a resident of the United Kingdom and the beneficial owner of the dividend, being a resident of Sweden, owns 10 per cent or more of the class of shares in respect of which the dividend is paid, then the exemption from tax and the limitation in the rate of tax provided for in paragraphs (2) and (3) of this Article 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 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 paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

(6) The provisions of paragraphs (1), (2) and (3) shall not apply if the recipient of the dividends, being a resident of one of the territories, has in the other territory, of which the company paying the dividends is a resident a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with a trade or business carried on through such permanent establishment. In such a case the provisions of Article III shall apply.

(7) Where a company which is a resident of one of the territories derives profits or income from the other territory, that other territory may not impose any tax on the dividends paid by the company to persons who are not residents of that other territory, or subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other territory."

ARTICLE 4

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

"Article VIII

(1) Interest derived and beneficially owned by a resident of one of the territories shall be exempt from tax in the other territory.

(2) The term "interest" as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the territory in which the income arises.

(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the interest, being a resident of one of the territories, has in the other territory a permanent establishment and the debt-claim from which the interest arises is effectively connected with a trade or business carried on through such permanent establishment. In such a case the provisions of Article III shall apply.

(4) Any provision in the law of one of the territories which relates only to interest paid to a non-resident company with or without any further requirement, or which relates only to interest payments between interconnected companies, with or without any further requirement, shall not operate so as to require such interest paid to a company which is a resident of the other territory to be left out of account as a deduction in computing the taxable profits of the company paying the interest as being a distribution.

(5) The exemption from tax provided for in paragraph (1) of this Article shall not apply to interest on any form of debt-claim dealt in on a stock exchange where the beneficial owner of the interest:

- (a) does not bear tax in respect thereof in the territory of which it is a resident ;
and
- (b) sells (or makes a contract to sell) the debt-claim from which such interest is derived within three months of the date on which such beneficial owner acquired such debt-claim.

(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, having regard to the debt-claim for which it is 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 apply only to the last-mentioned amount. In that case, the excess part of the payment shall remain taxable according to the law of each territory except that if the excess part of the interest is included in the taxable income of the payer, being a company, the tax levied on the excess part of the interest in the territory of which the payer is a resident shall not exceed the tax which would be charged if the interest was a dividend to which Article VII applies.

(7) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons."

ARTICLE 5

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

"Article IX

(1) Royalties derived and beneficially owned by a resident of one of the territories shall be exempt from tax in the other territory.

(2) The term "royalties" as used in this Article:

- (a) means payments of any kind received as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work, any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial or scientific equipment, or for information concerning industrial, commercial or scientific experience, but
- (b) does not include any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources or in respect of cinematograph, including television, films.

(3) The provisions of paragraph (1) of this Article shall not apply if the recipient of the royalties, being a resident of one of the territories, has in the other territory a permanent establishment and the right or property giving rise to the royalties is effectively connected with a trade or business carried on through such permanent establishment. In such a case, the provisions of Article III shall apply.

(4) Any provision of the law of one of the territories which requires royalties paid by a company to be left out of account as a deduction in computing the company's taxable profits as being a distribution shall not operate in relation to royalties paid to a resident of the other territory. The provisions of this paragraph shall not apply to royalties paid to a company which is a resident of that other territory where:

- (a) the same persons participate directly or indirectly in the management or control of the company paying the royalties and the company deriving the royalties, and
- (b) more than 50 per cent of the voting power in the company deriving the royalties is controlled, directly or indirectly, by a person or persons resident in the territory in which the company paying the royalties is resident.

(5) 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 apply only to the last-mentioned amount. In that case, the excess part of the payments shall remain taxable according to the law of each territory, except that if the excess part of the royalties is included in the taxable income of the payer, being a company, the tax levied on the excess part of the royalties in the territory of which the payer is a resident shall not exceed the tax which would be charged if the royalties were a dividend to which Article VII applies."

ARTICLE 6

Paragraph (3) of Article X of the Convention shall be deleted and replaced by the following:

"(3) The provisions of paragraphs (1) and (2) of this Article shall apply to income derived from the direct use or from the letting of immovable property or the use in any other form of such property, including income from agricultural or forestry enterprises."

ARTICLE 7

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

“Article XII

(1) Gains from the alienation of immovable property, as defined in paragraph (2) of Article X, may be taxed in the territory in which such property is situated.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of one of the territories has in the other territory or of movable property pertaining to a fixed base available to a resident of one of the territories in the other territory for the purpose of performing professional services, including such gains from the alienation of such a permanent establishment (alone or together with the whole enterprise) or of such a fixed base, may be taxed in the other territory. However, gains from the alienation of movable property of the kind referred to in paragraph (c) of Article XXI shall be taxable only in the territory in which such movable property is taxable according to the said Article.

(3) Gains from the alienation of any property other than those mentioned in paragraphs (1) and (2) shall be taxable only in the territory of which the alienator is a resident.”

ARTICLE 8

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

“Article XXII

(1) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of Sweden shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(2) Subject to the provisions of paragraph (3) of this Article, individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swedish tax as Swedish nationals not resident in Sweden.

(3) Nothing in this Convention shall entitle an individual who is a resident of one of the territories and whose income from the other territory consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in this Article for the purposes of taxation in that other territory.”

ARTICLE 9

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

“Article XXIII

(1) (a) 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) Swedish tax payable under the laws of Sweden and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Sweden (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 Swedish tax is computed.

(b) Where such income is a dividend paid by a company which is a resident of Sweden to a company which is a resident of the United Kingdom and which controls directly or indirectly not less than one-tenth of the voting power in the former company, the credit shall take into account (in addition to any Swedish tax payable in respect of the dividend) the Swedish tax payable by that former company in respect of its profits.

For the purposes of this paragraph the term Swedish tax shall not include any capital tax.

(2) (a) Where a resident of Sweden derives income or owns capital which under the laws of the United Kingdom and in accordance with the provisions of this Convention may be taxed in the United Kingdom, Sweden shall allow:

- (i) as a deduction from the tax on the income, an amount equal to the United Kingdom tax paid in respect of such income;
- (ii) as a deduction from the tax on the capital, an amount equal to any United Kingdom tax paid in respect of such capital.

The deduction in either case shall not, however, exceed that part of the income or capital tax, respectively, as computed before the deduction is given, which is appropriate, as the case may be, to the income or the capital which may be taxed in the United Kingdom.

(b) Where a resident of Sweden derives income or owns capital which in accordance with Article VI, the last sentence of paragraph (2) of Article XII, paragraph (1) of Article XIII and paragraph (c) of Article XXI shall be taxable only in the United Kingdom, such income or capital shall be exempt from Swedish tax; however, the graduated rates of Swedish tax may be calculated as though income or capital thus exempted were included in the amount of the total income or capital.

(3) Notwithstanding the provisions of paragraph (2), dividends paid by a company which is a resident of the United Kingdom to a company which is a resident of Sweden shall be exempt from Swedish tax, provided that in accordance with the laws of Sweden the dividends would be exempt from tax if both companies had been residents of Sweden.

(4) For the purposes of this Article, profits or remuneration for personal (including professional) services performed in one of the territories shall, unless paragraph (2) of Article XIII applies, 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.

(5) Where profits of an enterprise of one of the territories are also included in the profits of an enterprise of the other territory in accordance with Article IV, the amount of such profits included in the profits of both enterprises shall be treated for the purpose of this Article as income from a source in the other territory of the enterprise of the first-mentioned territory and credit shall be given accordingly under paragraph (1) or paragraph (2) of this Article."

ARTICLE 10

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

"Article XXV

(1) Where a resident of a Contracting Party considers that the action of one or both of the Contracting Parties result or will result for him in taxation not in accordance with this Convention, he may, notwithstanding the remedies provided by the national laws of those parties, present his case to the taxation authority of the Contracting Party of which he is a resident.

(2) The taxation authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the taxation authority of the other Contracting Party, with a view to the avoidance of taxation not in accordance with this Convention.

(3) The taxation authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

(4) The taxation authorities of the Contracting Parties may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs."

ARTICLE 11

Paragraph (3) of Article XXVI of the Convention shall be deleted and replaced by the following:

"(3) The taxation on a permanent establishment which an enterprise of one of the territories has in the other territory shall not be less favourably levied in that other territory than the taxation levied on enterprises of that other territory carrying on the same activities. Nothing in this Article shall be construed as obliging either Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents, nor as conferring any exemption from tax in a territory in respect of dividends paid to a company which is a resident of the other territory."

ARTICLE 12

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

"Article XXX

This Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the thirtieth day of June in any calendar year after the year 1970 give, through diplomatic channels, notice of termination to the other Contracting Party and, in such event, this Convention shall cease to be effective:

(a) in Sweden:

- (i) in respect of taxes on income derived on or after 1st January in the calendar year next following that in which the notice is given;
- (ii) in respect of capital tax assessed in or after the second calendar year following that in which the notice is given;

(b) in the United Kingdom:

- (i) as respect income tax (including surtax) and capital gains 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 corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the notice is given."

ARTICLE 13

(1) This Supplementary Protocol shall be ratified by the Contracting Parties in accordance with their respective constitutional and legal requirements. The instruments of ratification shall be exchanged at Stockholm as soon as possible.

(2) This Supplementary Protocol shall enter into force after the expiration of thirty days following the date on which the instruments of ratification are exchanged^(a) and shall thereupon have effect:

(a) in Sweden:

- (i) in respect of taxes on income derived on or after 1st January in the calendar year beginning after the entry into force of this Supplementary Protocol; provided, however, that the provisions of paragraph (2) of Article XXIII of the Convention as amended by Article 9 of this Supplementary Protocol shall have effect from the date of entry into force of this Supplementary Protocol in so far as these provisions allow a credit against Swedish tax for United Kingdom tax on dividends paid on or after the date of entry into force of this Supplementary Protocol;
- (ii) in respect of capital tax assessed in or after the calendar year beginning after the entry into force of this Supplementary Protocol;

(b) in the United Kingdom:

- (i) as respects income tax and surtax for any year of assessment beginning on or after 6th April, 1967;
- (ii) as respects corporation tax for any financial year beginning on or after 1st April, 1964; and
- (iii) as respects capital gains tax for any year of assessment beginning on or after 6th April, 1965.

(3) Where any greater relief from tax in the United Kingdom would have been afforded by any provision of the Convention than is due under the Convention as amended by this Supplementary Protocol, any such provision as aforesaid shall continue to have effect in the United Kingdom for any year of assessment or financial year beginning before the entry into force of this Supplementary Protocol.

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

Done in duplicate at London this 27th day of June, 1968, in the English and Swedish languages, both texts being equally authoritative.

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

WILLIAM RODGERS

For the Government of the Kingdom of
Sweden:

LEIF BELFRAGE

(a) Instruments of ratification were exchanged on 29th November 1968.

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Double Taxation Convention with Sweden signed on 28th July 1960 was amended by a Protocol signed on 25th March 1966. The Supplementary Protocol scheduled to this Order makes certain further alterations to this Convention, the more important of which are as follows.

The rate of tax in the source country on dividends flowing from one country to the other is normally not to exceed 15 per cent in the case of portfolio investment and 5 per cent in the case of direct investment. Interest and royalties flowing from one country to the other will (as hitherto) normally be exempt from tax in the source country. Relief from tax on dividends, interest and royalties in the country of origin will however no longer depend on whether the recipient is subject to tax in the other country, but will instead depend on whether the income is beneficially owned by a resident of the other country. Capital gains arising from the disposal of immovable property may be taxed in the country where the property is situated, but gains arising from the disposal of other property are to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of the assets of a permanent establishment or a fixed base which the taxpayer has in the other country. There are also further provisions for consultation between the taxation authorities of the two countries.

The Supplementary Protocol is, in general, 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 1967/68 and subsequent years.