

**1969 No. 1068**

**INCOME TAX**

**The Double Taxation Relief (Taxes on Income) (Denmark)  
Order 1969**

*Laid before the House of Commons in draft*

Made - - - 31st July 1969

At the Court at Arundel Park, the 31st day of July 1969

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) (Denmark) Order 1969.

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 Denmark 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 Denmark varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1950(c) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1967(d) ; and
- (b) that it is expedient that those arrangements should have effect.

*W. G. Agnew.*

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(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10.  
(c) S.I. 1950/1195 (1950 I, p. 1019).

(b) 1965 c. 25.  
(d) S.I. 1967/163 (1967 I, p. 274).

## SCHEDULE

SUPPLEMENTARY PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK, 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 THE 27TH MARCH, 1950, AS MODIFIED BY THE PROTOCOL SIGNED AT LONDON ON THE 7TH JULY, 1966

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

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 the 27th March, 1950, as modified by the Protocol signed at London on the 7th July, 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 the present Convention are:

(a) in Denmark:

the national income taxes and communal income taxes (hereinafter referred to as "Danish tax");

(b) in the United Kingdom of Great Britain and Northern Ireland:

(i) the income tax (including surtax);

(ii) the corporation tax; and

(iii) the capital gains tax

(hereinafter referred to as "United Kingdom tax")."

### ARTICLE 2

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

"(g) The terms "resident of the United Kingdom" and "resident of Denmark" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Denmark for the purposes of Danish tax, and any person who is resident in Denmark for the purposes of Danish tax and not resident in the United Kingdom for the purposes of United Kingdom tax; a company shall be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom and as resident in Denmark if its business is managed and controlled in Denmark and it is resident in Denmark for the purposes of Danish tax;"

### ARTICLE 3

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

"2. Where under any provision of the present Convention income is relieved from Danish tax and, under the law in force in the United Kingdom, an individual in respect of the said income is chargeable by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under the present Convention in Denmark shall apply only to so much of the income as is remitted to or received in the United Kingdom."

ARTICLE 4

Article V of the Convention shall be deleted.

ARTICLE 5

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

*“Article VII*

1. Dividends paid by a company being a resident of one of the territories which are beneficially owned by a resident of the other territory may be taxed in that other territory.

2. However, such dividends may also be taxed in the territory of which the company paying the dividends is a resident, and according to the law of that territory, but the tax so charged shall not exceed:

(a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the voting power of the company paying the dividends ;

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

3. The term “dividends” as used in this Article means income from 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 also includes any other item (other than interest or royalties relieved from tax under Article VIII or Article VIII A of the present Convention) which, under the law of the territory of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply if the beneficial owner 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 business carried on through that permanent establishment. In such a case, the provisions of Article III of the present Convention shall apply.

5. If the beneficial owner of a dividend being a resident of Denmark owns 10 per cent or more of the class of shares in respect of which the dividend is paid then the relief from United Kingdom tax provided for in paragraph 2 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 beneficial owner of the dividend shows that the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.

6. 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 and beneficially owned by 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 that other territory.”

ARTICLE 6

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 taxable only in that 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 beneficial owner 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 business carried on through that permanent establishment. In such a case, the provisions of Article III of the present Convention shall apply.

4. Any provision of 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 inter-connected 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 dividend or distribution.

5. 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 being a resident of Denmark:

(a) does not bear Danish tax in respect thereof ; 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 beneficial owner 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 beneficial owner 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, due regard being had to the other provisions of the present Convention.

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 7

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

*“Article VIII A*

1. Royalties derived and beneficially owned by a resident of one of the territories shall be taxable only in that territory.

2. The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films, and films or tapes for radio or television broadcasting), 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.

3. The provisions of paragraph 1 of this Article shall not apply if the beneficial owner 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 business carried on through that permanent establishment. In such a case, the provisions of Article III of the present Convention 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 preceding sentence shall not however apply to royalties derived and beneficially owned by 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 beneficially owning the royalties; and
- (b) more than 50 per cent of the voting power in the company beneficially owning 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 beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner 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, due regard being had to the other provisions of the present Convention."

#### ARTICLE 8

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

#### *Article XVI*

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

2. Subject to 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 Danish tax as Danish nationals not resident in Denmark.

3. Nothing in the present 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

Paragraphs 2 and 3 of Article XVII of the Convention shall be deleted and replaced by the following:

"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) Danish tax payable under the laws of Denmark and in accordance with

the present Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Denmark (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 Danish tax is computed ;

(b) in the case of a dividend paid by a company which is a resident of Denmark to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any Danish tax creditable under sub-paragraph (a) of this paragraph) the Danish tax payable by the company in respect of the profits out of which such dividend is paid.

3. (a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with the present Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom (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 deduction from the Danish tax payable in respect of the same profits, income or chargeable gains.

(b) In the case of a dividend paid by a company which is a resident of the United Kingdom to a company which is a resident of Denmark and which controls directly or indirectly at least 25 per cent of the share capital of the company paying the dividend, the deduction shall take into account (in addition to any United Kingdom tax deductible under sub-paragraph (a) of this paragraph) the United Kingdom tax payable by the company in respect of the profits out of which such dividend is paid.

(c) Nothing in this paragraph of this Article shall authorise a deduction exceeding the proportion of the total Danish tax which the amount of profits, income or chargeable gains from sources in the United Kingdom chargeable to Danish tax bears to the total amount chargeable to Danish tax."

#### ARTICLE 10

Paragraph 4 of Article XIX of the Convention shall be deleted and replaced by the following:

"4. Nothing contained in this Article shall be construed as obliging either territory to grant to individuals not resident in that territory any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident, nor as conferring any exemption from tax in one of the territories in respect of dividends paid to a company which is a resident of the other territory.

4A. In determining for the purpose of United Kingdom tax under the United Kingdom Finance Act 1965 whether a company is a close company, the term "recognised stock exchange" shall include the Copenhagen Stock Exchange."

#### ARTICLE 11

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

#### *"Article XXII*

The present Convention shall remain in force until denounced by one of the High Contracting Parties. Either High Contracting Party may denounce the present Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1971. In such event, the present Convention shall cease to have effect:

- (a) in the United Kingdom:
- (i) as respects 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 ;
- (b) in Denmark:  
as respects Danish tax for any taxation year beginning on or after 1st January in the calendar year next following that in which the notice is given.”

#### ARTICLE 12

(1) This Supplementary Protocol, which shall form an integral part of the Convention, shall be ratified and the instruments of ratification shall be exchanged at Copenhagen 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 the United Kingdom:
- (i) as respects income tax (including surtax) and capital gains tax, for any year of assessment beginning on or after 6th April, 1968 ; and
  - (ii) as respects corporation tax, for any financial year beginning on or after 1st April, 1968 ;
- (b) in Denmark:  
as respects Danish tax for any taxation year beginning on or after 1st April, 1968.

(3) Subject to paragraph (4) of this Article, where any greater relief from tax 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 for any year of assessment or financial year or taxation year beginning before the entry into force of this Supplementary Protocol.

(4) The provisions of sub-paragraphs (a) and (b) of paragraph (2) of this Article and of paragraph (3) of this Article shall not apply in relation to dividends but the provisions of the Convention as amended by this Supplementary Protocol shall have effect, and the provisions of the Convention before amendment by this Supplementary Protocol shall cease to be effective, in relation to dividends payable on or after the date of entry into force of this Supplementary Protocol.

In witness whereof the undersigned, duly authorised thereto, have signed this Supplementary Protocol.

Done in duplicate at London this 18th day of December, 1968, in the English and Danish languages, both texts being equally authoritative.

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

CHALFONT

For the Government of the Kingdom of Denmark:

E. KRISTIANSEN

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(a) Instruments of ratification were exchanged on 24th July 1969.

## EXPLANATORY NOTE

*(This Note is not part of the Order.)*

The Double Taxation Convention with Denmark signed on 27th March 1950 was amended by a Protocol signed on 7th July 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 but relief from tax on dividends, interest and royalties in the country of origin will 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.

The Supplementary Protocol is, in general, to take effect in the United Kingdom from April 1968.

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