STATUTORY INSTRUMENTS

1971 No. 391

INCOME TAX

The Double Taxation Relief (Taxes On Income) (Israel) Order 1971

Laid before the House of Commons in draft

Made - - - - 11th March 1971

At the Court at Buckingham Palace, the 11th day of March 1971

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 497(8) of the Income and Corporation Taxes Act 1970, 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 497 of the said Income and Corporation Taxes Act 1970 and section 39 of the Finance Act 1965, as amended, 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) (Israel) Order 1971.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in the Schedule to this Order have been made with the Government of Israel 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 Israel varying the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Israel) Order 1963(**1**); and

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

W. G. Agnew

(**1**) (1963 I, p. 744).

SCHEDULE

"PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF ISRAEL, 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 26th SEPTEMBER 1962

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

Desiring to conclude a Protocol to amend the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 26th September, 1962 corresponding to the 27th day of Illul, 5722 (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 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");

(b) in Israel:

(i) the income tax (including capital gains tax);

(ii) the company tax;

(iii) the security charge; and

(iv) the tax on gains from the sale of land under the Land Appreciation Tax Law

(hereinafter referred to as "Israel tax")."

ARTICLE 2. The following new sub-paragraph shall be added at the end of paragraph (1)(k) of Article II of the Convention:

"(vii) an enterprise of one of the territories shall be deemed to have a permanent establishment in the other territory if it carries on a business which consists of providing the services within that other territory of public entertainers referred to in Article XIV."

ARTICLE 3. Article VI of the Convention shall be deleted and replaced by the following:

"**Article VI.**—(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) Dividends paid by a company which is a resident of Israel may be taxed in Israel and according to the law of Israel but if the dividends are subject to tax in the United Kingdom the Israel tax so charged shall not exceed 15 per cent of the gross amount of the dividends. In this paragraph the term "Israel tax" includes any Israel tax chargeable on dividends paid by a company even though those dividends are allowed as a deduction in computing the profits of the company for income tax purposes in Israel.

(3) Dividends paid by a company which is a resident of the United Kingdom to a resident of Israel may be taxed in the United Kingdom and according to the law of the United Kingdom but

if the dividends are subject to tax in Israel the United Kingdom tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

(4) 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 VII or Article VIII of this Convention) which, under the law of the territory of which the company paying the dividend is a resident, is or may be treated as a dividend or distribution of a company.

(5) The provisions of paragraphs (1), (2) and (3) of this Article 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 business carried on through that permanent establishment. In such a case, the provisions of Article III shall apply.

(6) If the recipient of a dividend being a resident of one of the territories owns 10 per cent or more of the class of shares in respect of which the dividend is paid then the relief from 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 recipient 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 recipient 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.

(7) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory, there shall not be imposed in that other territory any form of taxation on dividends paid by the company to persons not resident in that other territory, or any tax in the nature of undistributed profits tax on undistributed profits of the company, whether or not those dividends or undistributed profits represent, in whole or in part, profits or incomes so derived."

ARTICLE 4. The following new paragraph shall be added at the end of Article VII of the Convention:

> "(5) 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. The preceding sentence shall not however apply to interest paid to a company which is a resident of one of the territories in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons resident in the other territory."

ARTICLE 5. The following new paragraph shall be added at the end of Article VIII of the Convention:

> "(6) 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 dividend or distribution of profit 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 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 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."

ARTICLE 6. The following new Article shall be inserted immediately after Article VIII of the Convention:

"**Article VIIIA.**—(1) Capital gains from the alienation of immovable property, as defined in paragraph (2) of Article IX, or from the alienation of shares not dealt in on a stock exchange being shares in a company of which the assets consist principally of such property, may be taxed in the territory in which such property is situated.

(2) Capital 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.

(3) Notwithstanding the provisions of paragraph (2) of this Article, capital gains derived by a resident of one of the territories from the alienation of ships and aircraft operated in international traffic and movable property pertaining to the operation of such ships and aircraft shall be taxable only in that territory.

(4) Capital gains from the alienation of any property other than those mentioned in paragraphs (1), (2) and (3) of this Article shall, if subject to tax in the territory of which the alienator is a resident, be taxable only in that territory."

ARTICLE 7. Paragaraph (1) of Article XVIII of the Convention shall be deleted and replaced by the following:

"(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) subject to sub-paragraph (*b*) of this paragraph, Israel tax payable under the laws of Israel and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Israel 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 Israel tax is computed; in this sub-paragraph the term "Israel tax" includes any Israel tax chargeable on dividends paid by a company even though those dividends are allowed as a deduction in computing the profits of the company for income tax purposes in Israel;

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

ARTICLE 8. Paragraph (3) of Article XVIII of the Convention shall be deleted and replaced by the following:

"(3) Subject to the provisions of the law of Israel regarding the allowance as a credit against Israel tax of tax payable in a territory outside Israel (which shall not affect the general principle hereof):

(a) subject to sub-paragraph (*b*) of this paragraph, United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within the United Kingdom shall be allowed as a credit against any Israel tax computed by reference to the same profits, income or chargeable gains by reference to which the United Kingdom tax is computed;

(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 Israel and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit shall take into account (in addition to any United Kingdom tax creditable under the provisions of sub-paragraph (*a*) of this paragraph) United Kingdom tax payable by the last-mentioned company in respect of the profits out of which such dividend is paid."

ARTICLE 9. Paragraph (3) of Article XXI 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 enterprise of that other territory carrying on the same activities.

(3A) Nothing contained in this Article shall be construed as obliging either contracting Party to grant to individuals not resident in its 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."

ARTICLE 10. Paragraph (1) of Article XXIV of the Convention shall be deleted and replaced by the following:

"(1) This Convention shall continue in effect indefinitely but either Contracting Party may, on or before the thirtieth day of June in any calendar year after the year 1971 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 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 Israel:

as respects Israel tax, for any tax year beginning on or after 1st April in the calendar year next following that in which the notice is given."

ARTICLE 11.—(1) This Protocol, which shall form an integral part of the Convention, shall be ratified and the instruments of ratification shall be exchanged as soon as possible.

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

(**2**) Instruments of ratification were exchanged on 22nd February 1971.

(a) in Israel:

in respect of Israel tax for any tax year beginning on or after 1st April, 1968;

(b) in the United Kingdom:

(i) in respect of income tax (including surtax) for any year of assessment beginning on or after 6th April, 1968;

(ii) in respect of capital gains tax for any year of assessment beginning on or after 6th April, 1968;

(iii) in respect of corporation tax for any financial year beginning on or after 1st April, 1968.

(3) Subject to the provisions of 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 Protocol, any such provision as aforesaid shall continue to have effect for any year of assessment or financial year or tax year beginning before the entry in force of this 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 Protocol shall have effect in relation to dividends paid on or after the date of entry into force of this Protocol, and the provisions of the Convention before amendment by this Protocol shall cease to be effective in relation to dividends payable on or after the date of entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.
Done in duplicate at London, this 20th day of April, 1970, corresponding to the 14th day of Nisan, 5730, in the English and Hebrew languages, both texts being equally authoritative.
For the Government of the United Kingdom of Great Britain and Northern Ireland:

D. E. T. LUARD

For the Government of Israel:

A. REMEZ"

EXPLANATORY NOTE

The Protocol scheduled to this Order extends the Convention with Israel signed on 26th September 1962 to United Kingdom corporation tax and capital gains tax, and introduces certain new provisions, 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 a dividend paid by an Israeli company, credit for the tax on the profits out of which the dividend is paid is to be given for United Kingdom tax purposes

where the recipient of the dividend is a United Kingdom company which controls at least 10 per cent of the voting power in the paying company. Capital gains from the disposal of moveable property are normally 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 which the taxpayer has in the other country.

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