STATUTORY INSTRUMENTS

1981 No. 1816

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Zambia) Order 1981

Laid before the House of Commons in draft

Made - - - - *16th December* 1981

At the Court at Buckingham Palace, the 16th day of December 1981

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970(**a**), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the Income and Corporation Taxes Act 1970, 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) (Zambia) Order 1981.

2. It is hereby declared—

(*a*) that the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Zambia) Order 1972(**b**) have been made with the Government of the Republic of Zambia 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 Zambia; and

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

N. E. Leigh,
Clerk of the Privy Council.

(**a**) 1970 c. 10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c.41) and section 10 of the Capital Gains Tax Act 1979 (c.14).
(**b**) S.I.1972/1721.

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF ZAMBIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT LUSAKA ON 22 MARCH 1972

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

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed at Lusaka on 22 March 1972 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Article 11 of the Convention shall be deleted and replaced by the following:

"ARTICLE 11

Dividends

(1) Dividends paid by a company which is a resident of Zambia to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Zambia according to the law of Zambia but, provided the recipient is subject to tax in respect thereof in the United Kingdom, the tax so charged, being tax which is charged in addition to the tax chargeable in respect of the profits of the company, shall not exceed:

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

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

(2) Dividends paid by a company which is a resident of the United Kingdom to a resident of Zambia may be taxed in Zambia. Such dividends may also be taxed in the United Kingdom and according to the laws of the United Kingdom but, provided the recipient is subject to tax in respect thereof in Zambia, the tax so charged, being tax which is charged in addition to the tax chargeable in respect of the profits of the company, shall not exceed:

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

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

(3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2) of this Article:

(*a*) (i) Dividends paid by a company which is a resident of the United Kingdom to a resident of Zambia may be taxed in Zambia on the aggregate of the amount or value of the dividends and the amount of the tax credit (if any) to which he is entitled under sub-paragraph (*b*) of this paragraph.

(ii) Where a resident of Zambia is entitled to a tax credit in respect of such a dividend under sub-paragraph (*b*) of this paragraph tax may also be charged in the United Kingdom and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.

(iii) Except as aforesaid, dividends paid by a company which is a resident of the United Kingdom to a resident of Zambia who is subject to tax in Zambia on them shall be exempt from any tax in the United Kingdom which is chargeable on dividends.

(*b*) A resident of Zambia who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (*c*) of this paragraph and provided he is subject to tax in Zambia on the dividends, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received those dividends, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.

(*c*) The provisions of sub-paragraph (*b*) of this paragraph shall not apply where the recipient of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. For the purposes of this sub-paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by the other, or both are controlled directly or indirectly by a third company.

(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 State of which the company making the distribution is a resident and also includes any other item of income (other than interest or royalties relieved from tax under the provisions of Article 12 or the provisions of Article 13 of this Convention) which, under the law of the Contracting State of which the company paying the dividends is a resident, is 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 a Contracting State, has in the other Contracting State, 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 8 shall apply.

(6) If the recipient of a dividend 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 (1), (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 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 a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company to persons who are not residents of that other State, 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 State."

ARTICLE II

Article 23 of the Convention shall be amended:

(*a*) by the addition of the following new paragraph (1A) immediately after paragraph (1):

"(1A) For the purposes of paragraph (1) of this Article the term "Zambia tax payable" shall be deemed to include any amount which would have been payable as Zambia tax for any year but for an exemption or reduction of tax granted for that year or any part thereof under—

(*a*) Sections 19 and 20 of the Pioneer Industries (Relief from Income Tax) Act, CAP 666, and Section 20(f) of the Industrial Development Act 1977, so far as they were in force on, and have not been modified since, the date of signature of the Protocol amending this Convention or have been modified only in minor respects so as not to affect their general character; or

(*b*) any other provision which may subsequently be made granting an exemption or reduction of tax which is agreed by the competent authorities of the Contracting States to be of a substantially similar character, if it has not been modified thereafter or has been modified only in minor respects so as not to affect its general character.

Provided that relief from United Kingdom tax shall not be given by virtue of this paragraph in respect of income from any source if the income arises in a period starting more than ten years after the exemption from, or reduction of, Zambia tax was first granted in respect of that source."

(*b*) by the substitution for the proviso to sub-paragraph (2) (*a*) of the following proviso—

"Provided that in the case of a dividend the credit shall take into account only such tax in respect thereof as is charged on the recipient under paragraph (2) or under paragraph (3) (*a*) (ii) of Article 11 and credit shall not be allowed in respect of any tax payable by the company on the profits out of which the dividend is paid."

ARTICLE III

This Protocol shall enter into force when the last of all such things shall have been done in the United Kingdom and Zambia as are necessary to give the Protocol the force of law in the United Kingdom and Zambia respectively, and shall thereupon have effect—

(*a*) in the United Kingdom:

(i) as respects income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1980; and

(ii) as respects corporation tax, for any financial year beginning on or after 1 April 1980;

(*b*) in Zambia:

as respects income for any charge year beginning on or after 1 April 1980.

ARTICLE IV

This Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at LUSAKA this 30th day of April 1981

For the Government of the Republic of Zambia:	For the Government of the United Kingdom of Great Britain and Northern Ireland:
K. S. MUSOKOTWANE	J. R. JOHNSON

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Protocol scheduled to this Order makes two amendments to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Zambia) Order 1972.

The first amendment (Article I) stems from the introduction of the present United Kingdom corporation tax system which, so far as it relates to the tax treatment of dividends paid by United Kingdom companies to overseas shareholders, came into operation on 6 April 1973. The Protocol amends Article 11 (Dividends) of the 1972 Convention by providing that where a United Kingdom company pays a dividend to a resident of Zambia, other than to a company which controls directly or indirectly at least 10 per cent of the voting power in the paying company, the recipient will be entitled to the tax credit to which an individual resident in the United Kingdom and in receipt of such a dividend would have been entitled, less tax at a rate not exceeding 15 per cent on the aggregate of the dividend and the tax credit. The tax treatment of dividends paid by a Zambian company to a resident of the United Kingdom remains unchanged.

The second amendment (Article II) changes the rules for the allowance of double taxation relief in the United Kingdom and Zambia. The Protocol amends Article 23 (Elimination of double taxation) of the 1972 Convention by providing (*a*) for credit to be given in the United Kingdom for tax spared under certain provisions of Zambian law and (*b*) for credit to be given in Zambia for the United Kingdom tax chargeable in respect of dividends in accordance with the revised Article 11 of the Convention.

The Protocol is to take effect from April 1980.

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