

SUBSIDIARY LEGISLATION

Order under section 41

INCOME TAX (DOUBLE TAXATION RELIEF)
(UNITED KINGDOM) ORDER*Commencement: 23rd January 1951***Citation.**

1. This Order may be cited as the Income Tax (Double Taxation Relief) (United Kingdom) Order.

Arrangement affording relief from double taxation set out in Schedule.

2. It is hereby declared that the Arrangement set out in the Schedule to this Order has been made with Her Majesty's Government in the United Kingdom with a view to affording relief from double taxation in relation to income tax (as defined in such Arrangement), and that it is expedient that such Arrangement shall have effect.

SCHEDULE

ARRANGEMENT

1. (1) The taxes which are the subject of this Arrangement are —
 - (a) in the United Kingdom :

the income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax");
 - (b) in Brunei Darussalam : the income tax (hereinafter referred to as "Brunei Darussalam tax").
- (2) This Arrangement shall also apply to any other taxes of a substantially similar character imposed in the United Kingdom or Brunei Darussalam after this Arrangement has come into force.
2. (1) In this Arrangement, unless the context otherwise requires —
 - (a) the term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man;
 - (b) the term "the State" means the State of Brunei Darussalam;
 - (c) the terms "one of the territories" and "the other territory" mean the United Kingdom or the State, as the context requires;

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- (d) the term “tax” means United Kingdom tax or Brunei Darussalam, as the context requires;
- (e) the term “person” includes any body of persons, corporate or not corporate;
- (f) the term “company” includes any body corporate;
- (g) the terms “resident of the United Kingdom” and “resident of the State” mean respectively any person who is resident in the United Kingdom for purposes of United Kingdom tax and not resident in the State for the purposes of Brunei Darussalam tax and any person who is resident in the United Kingdom for the purposes of United Kingdom tax; and not resident in the United Kingdom for the purposes of United Kingdom tax; and 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 the State if its business is managed and controlled in the State;
- (h) the terms “resident of one of the territories” and “resident of the other territory” mean a person who is a resident of the United Kingdom or a person who is a resident of the State, as the context requires;
- (i) the terms “United Kingdom enterprise” and “Brunei Darussalam enterprise” mean respectively an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom and an industrial or commercial enterprise or undertaking carried on by a resident of the State; and the terms “enterprise of one of the territories” and “enterprise of the other territory” mean a United Kingdom enterprise or a Brunei Darussalam enterprise, as the context requires;
- (j) the term “industrial or commercial profits” includes rentals in respect of cinematograph films;
- (k) the term “permanent establishment”, when used with respect to an enterprise of one of the territories, means a branch, management or other fixed place of business, but does not include an agency unless the agent has, and habitually exercises, a general authority to negotiate and conclude contracts on behalf of such enterprises or has a stock of merchandise from which he regularly fills orders on its behalf.
- An enterprise of one of the territories shall not be deemed to have a permanent establishment in the other territory merely because it carries on business dealing in that other territory through a *bona fide* broker or general commission agent acting in the ordinary course of his business as such.
- The fact that an enterprise of one of the territories maintains in the other territory a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute that fixed place of business a permanent establishment of the enterprise.

The fact that a company which is a resident of one of the territories has a subsidiary company which is a resident of the other territory or which is engaged in

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trade or business in that other territory or which is engaged in trade or business in that other territory (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary company a permanent establishment of its parent company.

(2) Where under this Arrangement any income is exempt from tax in one of the territories if (with or without other conditions) it is subject to tax in the other territory, and that income is subject to tax in that other territory by reference to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Arrangement in the first-mentioned territory shall apply only to the amount so remitted or received.

(3) In the application of the provisions of this Arrangement by the United Kingdom or the State, any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws of the United Kingdom, or, as the case may be, the State, relating to the taxes which are the subject of this Arrangement.

3. (1) The industrial or commercial profits of a United Kingdom enterprise shall not be subject to Brunei Darussalam tax unless the enterprise is engaged in trade or business in the State through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the State, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Brunei Darussalam enterprise shall not be subject to United Kingdom tax unless the enterprise is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, tax may be imposed on those profits by the United Kingdom, but only on so much of them as is attributable to that permanent establishment.

(3) Where an enterprise of one of the territories is engaged in trade or business in the other territory through a permanent establishment situated therein, there shall be attributed to that permanent establishment the industrial or commercial profits which it might be expected to derive from its activities in that other territory 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 same or similar conditions and dealing at arm's length with the enterprise of which it is a permanent establishment.

(4) No portion of any profits arising from the sale of goods or merchandise by an enterprise of one of the territories shall be attributed to a permanent establishment situated in the other territory by reason of the mere purchase of the goods or merchandise within that other territory.

4. Where —

(a) an enterprise of one of the territories participates directly or indirectly in the management, control or capital of an enterprise of the other territory; or

[Subsidiary]

SCHEDULE — (continued)

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of one of the territories and an enterprise of the other territory; and

(c) in either case conditions are made or imposed between the 2 enterprises, in their commercial or financial relations, which differ from those which would be made between independent enterprises,

then any profits which would but for those conditions have accrued to one of the enterprises but by reason of those conditions have not so accrued may be included in the profits of that enterprise and taxed accordingly.

5. Notwithstanding the provisions of paragraphs 3 and 4 profits which a resident of one of the territories derive from operating ships or aircraft shall be exempt from tax in the other territory.

6. (1) (a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Brunei Darussalam may be taxed in Brunei Darussalam.

(b) Where a resident of Brunei Darussalam is entitled to a tax credit in respect of such a dividend under subparagraph (2) 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 tax credit at a rate not exceeding 15 per cent.

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

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(2) A resident of Brunei Darussalam who receives dividends from a company which is a resident of the United Kingdom shall, subject to the provisions of subparagraph (3) of this paragraph and provided he is subject to tax in Brunei Darussalam 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.

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(3) Subparagraph (2) 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 purpose of this sub-paragraph 2 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.

[S 309/68; S 54/74]

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(4) Dividends paid by a company resident in Brunei Darussalam to a resident of the United Kingdom may be taxed in the United Kingdom. If the recipient of the dividends is subject to tax in the United Kingdom in respect thereof they shall be exempt from any tax in Brunei Darussalam which is chargeable in respect of the profits or income of the company.

[S 54/74]

(5) The term “dividends” as used in this paragraph 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 royalties exempt from tax under the provisions of the paragraph 7 of this Arrangement) 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.

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(6) If the recipient of a dividend is a company which owns 10 per cent or more of the class of shares in respect of which the dividend is paid then subparagraphs (1) and (2) or as the case may be subparagraph (4) of this paragraph shall not apply to the dividend to the extent it can have been paid only out of profits which the company paying the dividend earned or other income which is received in a period ending 12 months or more before the relevant date. For the purposes of this subparagraph 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 subparagraph shall not apply if the beneficial owner of the dividend shows that the shares were not primarily for the purpose of securing the benefit of this paragraph.

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(7) The provisions of subparagraph (1) and (2), or as the case may be subparagraph (4) of this paragraph shall not apply where a resident of one of the territories has in the other territory a permanent establishment and the holding by virtue of which the dividends are paid is effectively connected with the business carried on through such permanent establishment.

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(8) Where a company which is a resident of one of the territories derives profits or income from sources within the other territory shall not impose 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 an undistributed profits tax on undistributed profits of the company, by reason of the fact that those dividends or undistributed profits represent, in whole or in part, profits or income so derived.

[S 54/74]

7. (1) Any royalty derived from sources within one of the territories by a resident of the other territory who is subject to tax in that other territory in respect thereof and is not engaged in trade or business in the first-mentioned territory through a permanent establishment situated therein, shall be exempt from tax in that first-mentioned territory; but

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SCHEDULE — (continued)

no exemption shall be allow under this paragraph in respect of so much of any royalty as exceeds an amount which represents a fair and reasonable consideration for the rights for which the royalty is paid.

(2) In this paragraph the term “royalty” means any royalty or other amount paid as consideration for the use of, or for the privilege of using, any copyright, patent, design, secret process or formula, trade-mark, or other like property, but does not include a royalty or other amount paid in respect of the operation of a mine or quarry or of other extraction of natural resources.

8. (1) Remuneration, including pensions, paid by the Government of one of the territories to any individual for services rendered to that Government in the discharge of governmental functions shall be exempt from tax in the other territory if the individual is not ordinarily resident in that other territory or (where the remuneration is not a pension) is ordinarily resident in that other territory solely for the purpose of rendering those services.

(2) The provisions of this paragraph shall not apply to payments in respect of services rendered in connection with any trade or business carried on by either of the Governments for purposes of profit.

9. (1) An individual who is a resident of the United Kingdom shall be exempt from Brunei Darussalam tax on profits or remuneration in respect of personal (including professional) services performed within the State in any year of assessment if —

(a) he is present within the State for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of person resident in the United Kingdom; and

(c) the profits or remuneration are subject to United Kingdom tax.

(2) An individual who is a resident of the State shall be exempt from United Kingdom tax on profits or remuneration in respect of personal (including professional) services performed within the United Kingdom in any year of assessment if —

(a) he is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year; and

(b) the services are performed for or on behalf of a person resident in the State; and

(c) the profits or remuneration are subject to Brunei Darussalam tax.

(3) The provisions of this paragraph shall not apply to the profits or remuneration of public entertainers such as stage, motion picture or radio artists, musicians and athletes.

10. (1) Any pension (other than a pension paid by the Government of the State for services rendered to it in the discharge of governmental functions) and any annuity, derived

SCHEDULE — (continued)

from sources within the State by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Brunei Darussalam tax.

(2) Any pension (other than a pension paid by the Government of the United Kingdom for services rendered to it in the discharge of governmental functions) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of the State and subject to United Kingdom tax in respect thereof, shall be exempt from United Kingdom tax.

(3) The term “annuity” means a stated sum payable periodically at stated times, during life or during a specified or ascertainable period of time, under an obligation to make the payments in consideration of money paid.

11. A student or business apprentice from one of the territories who is receiving full-time education or training in the other territory shall be exempt from tax in that other territory on payments made to him by person in the first-mentioned territory for the purposes of his maintenance, education or training.

12. (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) Brunei Darussalam payable under the laws of Brunei Darussalam and in accordance with this Arrangement, whether directly or by deduction, on profits or income from sources within Brunei Darussalam shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits or income by reference to which the Brunei Darussalam tax is computed:

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable;

(b) where a company which is a resident of Brunei Darussalam pays a dividend to a company resident in the United Kingdom which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any Brunei Darussalam tax for which credit may be allowed under (a) of this sub-paragraph) the Brunei Darussalam tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

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(2) Subject to the provisions of the laws of Brunei Darussalam regarding the allowance as a credit against Brunei Darussalam tax of tax payable in a territory outside Brunei Darussalam (which shall not effect the general principle hereof) —

(a) United Kingdom tax payable under the laws of the United Kingdom and in accordance with this Arrangement, whether directly or by deduction, on profits or

SCHEDULE — (continued)

income from sources within the United Kingdom shall be allowed as a credit against any Brunei Darussalam tax computed by reference to the same profits or income by reference to which the United Kingdom tax is computed:

Provided that in the case of a dividend the credit shall only take into account such tax in respect thereof as is additional to any tax payable by the company on the profits out of which the dividend is paid and is ultimately borne by the recipient without reference to any tax so payable;

(b) where a company which is a resident of the United Kingdom pays a dividend to a company resident in Brunei Darussalam which controls directly or indirectly at least 10 per cent of the voting power in the first-mentioned company, the credit shall take into account (in addition to any United Kingdom tax for which credit may be allowed under (a) of this sub-paragraph) the United Kingdom tax payable by the first mentioned company in respect of the profits out of which such dividend is paid.

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(3) For the purposes of this paragraph profits or remuneration for personal (including professional) services performed in one of the territories shall 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.

(4) Where Brunei Darussalam income tax is payable for a year for which this Arrangement has effect in respect of any income in respect of which United Kingdom income tax is payable for a year prior to the year beginning on the 6th April 1950, then —

(a) in the case of a person resident in the State, the Brunei Darussalam income tax shall, for the purposes of sub-paragraph (2) of this paragraph, be deemed to be reduced by the amount of any relief allowable in respect thereof under the provisions of section 27 of the United Kingdom Finance Act, 1920; and

(b) in the case of a person resident in the United Kingdom, the provisions of section 39 of the Brunei Darussalam Income Tax Act, shall apply for the purposes of the allowance of relief from the Brunei Darussalam tax.

13. (1) The taxation authorities of the United Kingdom and the State shall exchange such information (being information available under their respective taxation laws) as is necessary for carrying out the provisions of this Arrangement 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 this Arrangement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Arrangement. No information shall be exchanged which would disclose any trade secret or trade process.

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(2) As used in this paragraph, the term “taxation authorities” means the Commissioners of Inland Revenue or their authorised representative in the case of the United Kingdom and the Collector of Income Tax or his authorised representative in the case of the State.

14. This Arrangement shall come into force on the date on which the last of all such things shall have been done in the United Kingdom and the State as are necessary to give the Arrangement the force of law in the United Kingdom and the State respectively, and shall thereupon have effect —

(a) in the United Kingdom —

as respects income tax, for any year of assessment beginning on or after the 6th April 1950;

as respects sur-tax, for any year of assessment beginning on or after the 6th April 1949; and

as respects profits tax, in respect of the following profits —

- (i) profits arising in any chargeable accounting period beginning on or after the 1st April 1950;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after that date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is, or but for the present Arrangement would be, chargeable for any year of assessment beginning on or after the 6th April 1950;

(b) in the State —

as respects income tax, for the year of assessment beginning on the first day of January 1950, and subsequent years.

15. This Arrangement shall continue in effect indefinitely but either of the Governments may, on or before the 30 day of June in any calendar year after the year 1951, give notice of termination to the other Government and, in such event, this Arrangement shall cease to be effective —

(a) in the United Kingdom —

as respects income tax, for any year of assessment beginning on or after the 6th April in the calendar year next following that in which the notice is given;

as respects sur-tax, for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given; and

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as respects profits tax, in respect of the following profits —

- (i) profits arising in any chargeable accounting period beginning on or after the 1st April in the calendar year next following that in which the notice is given;
- (ii) profits attributable to so much of any chargeable accounting period falling partly before and partly after the date as falls after that date;
- (iii) profits not so arising or attributable by reference to which income tax is chargeable for any year of assessment beginning on or after the 6th April in that next following calendar year;

(b) in the State —

as respects income tax, for any year of assessment beginning on or after the first day of January in the calendar year next following that in which such notice is given.