

13. This Order shall be deemed to have come into operation on the 17th day of December, 1954.

Ordered this 19th day of September, 1955.

By Command of His Excellency the Governor,

(M.P. 668/46/2.)

G. P. CASSELS,
Clerk of the Executive Council.

No. 558. THE INCOME TAX LAW.

CAP. 297 AND LAWS 13 OF 1950, 8 OF 1951, 31 OF 1952, 13 OF 1953
AND 5 OF 1955.

ORDER IN COUNCIL No. 2795

MADE UNDER SECTION 46 (1).

Whereas it is provided by sub-section (1) of section 46 of the Income Tax Law, that if the Governor in Council by Order declares that arrangements specified in the Order have been made with the Government of any territory outside the Colony with a view to affording relief from Double Taxation in relation to Income Tax and any tax of a similar character imposed by the laws of that territory and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to Income Tax notwithstanding anything in any enactment :

And whereas by a Convention dated the 27th day of March, 1950, between the Government of the United Kingdom and the Government of Denmark, arrangements were made among other things for the avoidance of Double Taxation :

And whereas provision is made in the said Convention for the extension by means of an exchange of notes between the High Contracting Parties of the said Convention, subject to such modifications and conditions (including conditions as to termination) as may be specified in the exchange of notes, to any territory, for whose inter-national relations the United Kingdom is responsible, which imposes taxes substantially similar in character to those which are the subject of the said Convention :

And whereas by an Exchange of Notes dated respectively the 18th November and the 22nd December, 1954, the said Convention with certain modifications was applied to the Colony :

Now, therefore, in exercise of the powers vested in the Governor in Council by sub-section (1) of section 46 of the Income Tax Law, His Excellency the Governor, with the advice of the Executive Council, has been pleased to order as follows :—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Denmark) Order, 1955.

2. It is hereby declared :

- (a) that the arrangements specified in the First Schedule to this Order, as modified by the provisions of the Second Schedule to this Order, have been made with the Government of Denmark ;
- (b) that it is expedient that those arrangements should have effect.

Cap. 297
13 of 1950
8 of 1951
31 of 1952
13 of 1953
5 of 1955

FIRST SCHEDULE.

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME.

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

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have appointed for that purpose as their Plenipotentiaries :

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

The Right Honourable Ernest Bevin, M.P., Principal Secretary of State for Foreign Affairs ;

The Government of the Kingdom of Denmark :

His Excellency Count Eduard Reventlow ; Ambassador Extraordinary and Plenipotentiary of Denmark in London ;

Who, having exhibited their respective full powers, found in good and due form, have agreed as follows :—

ARTICLE I.

1. The taxes which are the subject of the present Convention are :
 - (a) In Denmark : The national income tax (including the extraordinary company tax) (hereinafter referred to as "Danish tax").
 - (b) In the United Kingdom of Great Britain and Northern Ireland : The income tax (including sur-tax) and the profits tax (hereinafter referred to as "United Kingdom tax").
2. The present Convention shall also apply to any other taxes of a substantially similar character imposed in Denmark or the United Kingdom subsequently to the date of signature of the present Convention.

ARTICLE II.

1. In the present Convention, 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 "Denmark" means the Kingdom of Denmark, excluding the Faroe Islands and Greenland ;
 - (c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Denmark, as the context requires ;
 - (d) The term "tax" means United Kingdom tax or Danish tax, as the context requires ;
 - (e) The term "person" includes any body of persons, corporate or not corporate ;
 - (f) The term "company" means any body corporate ;
 - (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 ;

- (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 Denmark, as the context requires ;
- (i) The terms "United Kingdom enterprise" and "Danish 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 Denmark, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Danish enterprise, as the context requires ;
- (j) The term "industrial or commercial profits" includes rents or royalties 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, factory, 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 enterprise or has a stock of merchandise from which he regularly fills orders on its behalf. In this connection—
- (i) 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 dealings in that other territory through a bona fide broker or general commission agent acting in the ordinary course of his business as such ;
 - (ii) 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 ;
 - (iii) 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 carries on a 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 Convention 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 only to the amount thereof which is remitted to or received in that other territory, the exemption to be allowed under this Convention in the first-mentioned territory shall apply only to the amount so remitted or received.

3. In the application of the provisions of the present Convention by one of the High Contracting Parties any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the laws in force in the territory of that Party relating to the taxes which are the subject of the present Convention.

ARTICLE III.

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

2. The industrial or commercial profits of a Danish enterprise shall not be subject to United Kingdom tax unless the enterprise carries on a trade or business in the United Kingdom through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, 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 carries on a 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 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 enterprise of which it is a permanent establishment.

4. Where an enterprise of one of the territories derives profits, under contracts concluded in that territory, from sales of goods or merchandise stocked in a warehouse in the other territory for convenience of delivery and not for purposes of display, those profits shall not be attributed to a permanent establishment of the enterprise in that other territory, notwithstanding that the offers of purchase have been obtained by an agent in that other territory and transmitted by him to the enterprise for acceptance.

5. No portion of any profits arising to 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 goods or merchandise within that other territory by the enterprise.

ARTICLE IV.

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
- (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 in either case, conditions are made or imposed between the two 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.

ARTICLE V.

1. The industrial and commercial profits of a company which is a resident of Denmark shall, so long as undistributed profits of United Kingdom enterprises are effectively charged to United Kingdom Profits Tax at a lower rate than distributed profits of such enterprises, be charged to United Kingdom Profits Tax only at that lower rate.

2. Where a company which is a resident of Denmark controls, directly or indirectly, not less than 50 per cent. of the entire voting power of a company which is a resident of the United Kingdom, distributions by the latter company to the former company shall be left out of account in computing United Kingdom Profits Tax effectively chargeable on the latter company at the rate appropriate to distributed profits.

3. If the industrial and commercial profits of a company which is a resident of the United Kingdom become chargeable to a form of Danish tax under which, in the case of companies which are residents of Denmark, the un-

distributed or undistributable income is charged to tax at a lower rate than the distributed or distributable income of such companies, these industrial and commercial profits shall be charged to Danish tax only at the lower rate.

4. Where a company which is a resident of the United Kingdom beneficially owns not less than 50 per cent. of the entire ordinary share capital of a company which is a resident of Denmark, distributed or distributable income payable by the latter company to the former company shall be left out of account in computing the liability of the latter company to Danish tax at any higher rate appropriate to distributed or distributable income, and this shall apply, in particular in computing the liability of the latter company to that part of the Danish extraordinary tax on companies known as Udbytterate.

ARTICLE VI.

1. Notwithstanding the provisions of Articles III, IV and V, profits which a resident of one of the territories derives from operating ships or aircraft shall be exempt from tax in the other territory.

2. The Agreement dated 18th December, 1924 (a), between the United Kingdom and Denmark for the reciprocal exemption from Income Tax in certain cases of profits accruing from the business of shipping shall not have effect for any year or period for which the present Convention has effect.

ARTICLE VII.

1.—(a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Denmark, who is subject to tax in Denmark in respect thereof and does not carry on a trade or business in the United Kingdom through a permanent establishment situated therein, shall be exempt from United Kingdom sur-tax.

(b) Dividends paid by a company which is a resident of Denmark to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on a trade or business in Denmark through a permanent establishment situated therein, shall not be chargeable to tax in addition to the tax on the profits out of which the dividends are paid at a rate exceeding 5 per cent. : Provided that where the resident of the United Kingdom is a company which beneficially owns not less than 50 per cent. of the entire ordinary share capital of the company paying the dividends, the dividends shall be exempt from any such tax on dividends.

2. 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 income so derived.

ARTICLE VIII.

1. Any interest or 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 does not carry on a 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 no exemption shall be allowed in respect of interest paid by a company which is a resident of one of the territories to a company which is a resident of the other territory where the latter company controls, either directly or indirectly, more than 50 per cent. of the entire voting power of the former company.

2. In this Article—

(a) The term " interest " includes interest on bonds, securities, notes, debentures or on any other form of indebtedness ;