

No. 508.

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. 2839

MADE UNDER SECTION 48 (1).

Whereas it is provided by sub-section (1) of section 48 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 2nd day of May, 1951, between the Government of the United Kingdom and the Government of Norway, 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 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 international 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 the 18th day of May, 1955, the said Convention with certain modifications was applied to the Colony :

Cap. 297.

Now, therefore, in exercise of the powers vested in the Governor-in-Council by sub-section (1) of section 48 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) (Norway) Order, 1956.
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 Norway ;
 - (b) that it is expedient that those arrangements should have effect.

FIRST SCHEDULE.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE NORWEGIAN GOVERNMENT 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 Norway,

* NOTE : The Income Tax Law has been re-printed by authority and the sections referred to in this Order correspond with the sections in the Income Tax Law, as re-printed.

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,
Have agreed as follows :—

ARTICLE I.

(1) The taxes which are the subject of the present Convention are :—

(a) In Norway :

The national income tax, including the national defence tax on income, the communal income tax, the old age pension tax, the war pension tax, and the seamen's tax, and, for the purposes of Article XIX, the national property tax, including the national defence tax on property (hereinafter referred to as "Norwegian tax") ;

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

The income tax (including surtax) 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 Norway 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 "Norway" means the Kingdom of Norway, excluding Spitsbergen and Bear Island and Jan Mayen and the Norwegian dependencies outside Europe ;

(c) The terms "one of the territories" and "the other territory" mean the United Kingdom or Norway, as the context requires ;

(d) The term "tax" means United Kingdom tax or Norwegian 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 Norway" mean respectively any person who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in Norway for the purposes of Norwegian tax, and any person who is resident in Norway for the purposes of Norwegian 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 Norway if its business is managed and controlled in Norway ;

(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 Norway, as the context requires ;

(i) The terms "United Kingdom enterprise" and "Norwegian 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 Norway, and the terms "enterprise of one of the territories" and "enterprise of the other territory" mean a United Kingdom enterprise or a Norwegian 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 connexion—
- (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 the present 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 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 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 Norwegian tax unless the enterprise carries on a trade or business in Norway through a permanent establishment situated therein. If it carries on a trade or business as aforesaid, tax may be imposed on those profits by Norway, but only on so much of them as is attributable to that permanent establishment.

(2) The industrial or commercial profits of a Norwegian 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.

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

ARTICLE VI.

(1)—(a) Dividends paid by a company which is a resident of the United Kingdom to a resident of Norway, who is subject to tax in Norway 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 surtax.

(b) Norwegian tax on dividends paid by a company which is a resident of Norway to a resident of the United Kingdom, who is subject to tax in the United Kingdom in respect thereof and does not carry on trade or business in Norway through a permanent establishment situated therein, shall not exceed 5 per cent :

Provided that, where the resident of the United Kingdom is a company which controls, directly or indirectly, not less than 50 per cent. of the entire voting power of the company paying the dividends, the dividends shall be exempt from Norwegian tax.

(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 an 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 VII.

(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.

(2) In this Article—

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

(b) 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 any royalty or other amount paid in respect of the operation of a mine or quarry or of any other extraction of natural resources.

(3) Where any interest or royalty exceeds a fair and reasonable consideration in respect of the indebtedness or rights for which it is paid, the exemption provided by the present Article shall apply only to so much of the interest or royalty as represents such fair and reasonable consideration.

(4) Any capital sum derived from sources within one of the territories from the sale of patent rights by a resident of the other territory, who 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.

ARTICLE VIII.

(1) Where under the provisions of the present Convention a resident of the United Kingdom is exempt or entitled to relief from Norwegian tax, similar exemption or relief shall be applied to the undivided estates of deceased persons in so far as one or more of the beneficiaries is a resident of the United Kingdom.

(2) Norwegian tax on the undivided estate of a deceased person shall, in so far as the income accrues to a beneficiary who is resident in the United Kingdom, be allowed as a credit under Article XVI.

ARTICLE IX.

(1) Remuneration, including pensions, paid by, or out of funds created by, one of the Contracting Parties to any individual in respect of services rendered to that Party in the discharge of governmental functions shall be exempt from tax in the territory of the other Contracting Party, unless the individual is a national of that other Party without being also a national of the first-mentioned Party.

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

ARTICLE X.

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

(a) he is present within Norway 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 resident of the United Kingdom, and

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