

FIFTH SCHEDULE

(Section 87)

Income Tax (Double Taxation Relief) (Denmark) Order

1. Short title.

This Order may be cited as the Income Tax (Double Taxation Relief) (Denmark) Order.

2. Declaration.

It is hereby declared

- (a) that the arrangements specified in Schedule 1 to this Order, as modified by the provisions of Schedule 2 to this Order, have been made with the Government of Denmark;
- (b) that it is expedient that those arrangements shall have effect.

SCHEDULE 1 TO THE ORDER

(Section 2)

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.

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 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 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.

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 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 or she regularly fills orders on its behalf, and 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 in the ordinary course of his or her 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, and 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, and 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 or her 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 term "royalty" means any royalty or other amount paid as con-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% 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 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% 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 extra-ordinary 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 (SR&O No. 120 of 1925) 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. (1) 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 surtax.

(2) 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%:

Provided that where the resident of the United Kingdom is a company which beneficially owns not less than 50% 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% 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;

(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 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 IX

Income of whatever nature derived from real property within one of the territories (except interest on mortgages secured on real property) shall be chargeable to tax in accordance with the laws of that territory, and where the said income is also chargeable to tax in the other territory, credit for the tax payable in the

first-mentioned territory shall be given against the tax payable on that income in the other territory in accordance with Article XVII.

ARTICLE X

A resident of one of the territories who does not carry on a trade or business in the other territory through a permanent establishment situated therein shall be exempt in that other territory from any tax on gains from the sale, transfer, or exchange of capital assets.

ARTICLE XI

1. Remuneration, including pensions, paid by, or out of funds created by, one of the High 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 High 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 connection with any trade or business carried on by either of the High Contracting Parties for purposes of profit.

ARTICLE XII

1. An individual who is a resident of the United Kingdom shall be exempt from Danish tax on profits or remuneration in respect of personal (including professional) services performed within Denmark in any year of assessment, if
 - (a) he or she is present within Denmark for a period or periods not exceeding in the aggregate 183 days during that year;
 - (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.
2. An individual who is a resident of Denmark 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 or she is present within the United Kingdom for a period or periods not exceeding in the aggregate 183 days during that year;
 - (b) the services are performed for or on behalf of a resident of Denmark; and
 - (c) the profits or remuneration are subject to Danish tax.
3. The provisions of this Article shall not apply to the profits or remuneration of public entertainers such as theatre, motion picture or radio artistes, musicians and athletes.

ARTICLE XIII

1. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within Denmark by an individual who is a resident of the United Kingdom and subject to United Kingdom tax in respect thereof, shall be exempt from Danish tax.
2. Any pension (other than a pension of the kind referred to in paragraph 1 of Article XI) and any annuity, derived from sources within the United Kingdom by an individual who is a resident of Denmark and subject to Danish 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 return for adequate and full consideration in money or money's worth.

ARTICLE XIV

A professor or teacher from one of the territories who receives remuneration from teaching, during a period of temporary residence not exceeding two years, at a university, college, school or other educational institution in the other territory, shall be exempt from tax in that other territory in respect of that remuneration.

ARTICLE XV

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 or her by persons in the first-mentioned territory for the purposes of his or her maintenance, education or training.

ARTICLE XVI

1. Individuals who are residents of Denmark shall be entitled to the same personal allowances, relief and reductions for the purposes of United Kingdom tax as British subjects not resident in the United Kingdom;
2. Individuals who are residents of the United Kingdom shall be entitled to the same personal allowances and relief for the purposes of Danish tax as Danish nationals not resident in Denmark.

ARTICLE XVII

1. The laws of the High Contracting Parties shall continue to govern the taxation of income arising in either of the territories, except where express provision to the contrary is made in this Convention. Where income is subject to tax in both territories, relief from double taxation shall be given in accordance with the following paragraphs.

2. 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, Danish tax payable, whether directly or by deduction, in respect of income from sources within Denmark shall be allowed as a credit against the United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a company resident in Denmark, the credit shall take into account (in addition to any Danish tax appropriate to the dividend) the Danish tax payable by the company in respect of its profits; and, where it is a dividend paid on participating preference shares and representing both a dividend at the fixed rate to which the shares are entitled and an additional participation in profits, the Danish tax so payable by the company shall likewise be taken into account in so far as the dividend exceeds that fixed rate.

3. United Kingdom tax payable, whether directly or by deduction, in respect of income from sources within the United Kingdom shall be allowed as a deduction from the Danish tax payable in respect of that income:

Provided that the amount of the deduction shall not exceed the portion of the Danish tax which such income chargeable to Danish tax bears to the total income chargeable to Danish tax, and for the purposes of this paragraph only, the expression "Danish tax" shall include the Danish inter-municipal income tax.

4. (1) In the case of a person who is resident in the United Kingdom for the purposes of United Kingdom tax and is also resident in Denmark for the purposes of Danish tax, the provisions of paragraph 2 of this Article shall apply in relation to income which that person derives from sources within Denmark, and the provisions of paragraph 3 of this Article shall apply in relation to income which he or she derives from sources within the United Kingdom.

(2) If such person derives income from sources outside both the United Kingdom and Denmark, tax may be imposed on that income in both the territories (subject to the laws in force in the territories and to any Convention which may exist between either of the High Contracting Parties and the territory from which the income is derived).

(3) A credit shall be allowed in accordance with paragraph 2 of this Article against any United Kingdom tax payable in respect of that income, equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within the United Kingdom bears to the sum of his or her income from sources within the United Kingdom and his or her income from sources within Denmark; and a deduction shall be allowed in accordance with paragraph 3 of this Article against any Danish tax payable in respect of that income equal to that proportion of the United Kingdom tax or the Danish tax on that income, whichever is the less, which such person's income from sources within Denmark bears to the sum of his or her income from sources within the United Kingdom and his or her income from sources within Denmark.

5. For the purposes of this Article, 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.

ARTICLE XVIII

1. (1) The taxation authorities of the High Contracting Parties shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or for the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of the present Convention.

(2) 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 the present Convention, and no information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process.

2. As used in this Article, the term "taxation authorities" means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representatives; in the case of Denmark, the Director-General of Taxation or his or her authorised representative; and, in the case of any territory to which the present Convention is extended under Article XX, the competent authority for the administration is such territory of the taxes to which the present Convention applies.

ARTICLE XIX

1. The nationals of one of the High Contracting Parties shall not be subjected in the territory of the other High Contracting Party to any taxation or any requirement connected therewith which is other, higher, or more burdensome than the taxation and connected requirements to which the nationals of the latter Party are or may be subjected.

2. The enterprises of one of the territories, whether carried on by a company, a body of persons or by individuals alone or partnership, shall not be subjected in the other territory, in respect of profits or capital attributable to their permanent establishments in that other territory, to any taxation which is other, higher or more burdensome than the taxation to which the enterprises of that other territory similarly carried on are or may be subjected in respect of the like profits or capital.

3. The income, profits and capital of an enterprise of one of the territories, the capital of which is wholly or partly owned or controlled, directly or indirectly, by a resident or residents of the other territory shall not be subjected in the first-mentioned territory to any taxation which is other, higher or more burdensome than the taxation to which other enterprises of that first-mentioned territory are or may be subjected in respect of the like income, profits and capital.

4. Nothing in paragraph 1 or paragraph 2 of this Article shall be construed as obliging one of the High Contracting Parties to grant to nationals of the other High Contracting Party who are not resident in the

territory of the former Party the same personal allowances, relief and reductions for tax purposes as are granted to its own nationals.

5. In this Article, the term “nationals” means,

- (a) in relation to Denmark, all Danish citizens and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in Denmark or in any Danish territory to which the present Convention applies by reason of extension made under Article XX;
- (b) in relation to the United Kingdom, all British subjects and British protected persons residing in the United Kingdom or any British territory to which the present Convention applies by reason of extension made under Article XX, and all legal persons, partnerships, associations and other entities deriving their status as such from the law in force in any British territory to which the present Convention applies.

6. In this Article the term “taxation” means taxes of every kind and description levied on behalf of any authority whatsoever.

ARTICLE XX

1. The present Convention may be extended, either in its entirety or with modification, to any territory of one of the High Contracting Parties to which this Article applies and which imposes taxes substantially similar in character to those which are the subject of the present Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the High Contracting Parties in notes to be exchanged for this purpose.

2. The termination in respect of Denmark or the United Kingdom of the present Convention under Article XXII shall, unless otherwise expressly agreed by both High Contracting Parties, terminate the application of the present Convention to any territory to which the Convention has been extended under this Article.

3. The territories to which this Article applies are,

- (a) in relation to the United Kingdom, any territory other than the United Kingdom for whose international relations the United Kingdom is responsible;
- (b) in relation to Denmark, any territory other than Denmark for whose international relations Denmark is responsible.

ARTICLE XXI

1. The present Convention shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

2. Upon exchange of ratifications the present Convention shall have effect, in Denmark, as respects Danish tax for any taxation year beginning on or after the 1st April, 1949, and in the United Kingdom,

- (a) as respects income tax for any year of assessment beginning on or after the 6th April, 1949;
- (b) as respects surtax tax for any year of assessment beginning on or after the 6th April, 1948;
- (c) 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, 1949;
 - (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 Convention would be, chargeable for any year of assessment beginning on or after the 6th April, 1949.

ARTICLE XXII

The present Convention shall continue in effect indefinitely but either of the High Contracting Parties may, on or before the 30th June in any calendar year not earlier than the year 1953, give to the other High Contracting Party, through diplomatic channels, written notice of termination and, in such event, the present Convention shall cease to be effective, in Denmark, as respects Danish tax for any taxation year beginning on or after the 1st April in the calendar year next following that in which the notice is given, and in the United Kingdom,

- (a) 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;
- (b) as respects surtax tax for any year of assessment beginning on or after the 6th April in the calendar year in which the notice is given;
- (c) 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 that 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 the next following calendar year.

SCHEDULE 2 TO THE ORDER

(Section 2)

1. Application.

(1) The provisions of the Convention incorporated in Schedule 1 to this Order shall apply as modified below:

- (a) as if the contracting parties were the Government of Saint Christopher and Nevis and the Government of Denmark;
- (b) as if the tax concerned in the case of Saint Christopher and Nevis were the tax on income imposed by the Income Tax Act, as amended;
- (c) as if the tax concerned in the case of Denmark included the defence tax;
- (d) as if references to the date of signature were references to the 22nd day of December, 1954;
- (e) as if references to the 6th day of April were references to the 1st day of January.

(2) The extension shall have effect in Saint Christopher and Nevis as respects tax for the year of assessment 1954 and for subsequent years of assessment, (and will have effect in Denmark, as respects Danish Tax for any taxation year beginning on or after the 1st day of April, 1954).

(3) The extension shall continue in effect indefinitely but may be terminated as respects Saint Christopher and Nevis by written notice of termination given on or before the 30th June in any calendar year not earlier than the year 1957 by either of the High Contracting Parties to the Convention to the other High Contracting Party, through diplomatic channels, and in such event the extension shall cease to have effect in Saint Christopher and Nevis as respects tax for the year of assessment beginning in the calendar year next following the date of such notice and for subsequent years of assessment, (and will cease to have effect in Denmark as respects Danish tax for any taxation year beginning on or after the first day of April in the calendar year next following that in which the notice is given).

2. **Modifications.**

(1) In Article VII (1) of the Convention the words “exempt from the United Kingdom surtax” shall be understood, for the purposes of this extension, as though they read “shall not be liable to tax in the territory at a rate in excess of the rate applicable to a company”.

(2) In Articles VIII and IX all references to interest shall be deemed to be deleted.