

L.N. 207 of 1958

INCOME TAX ORDINANCE (CHAPTER 92)

Income Tax (Double Taxation Relief) (U.S.A.) Order, 1958

Commencement : See S. 1 (b) of Second Schedule

WHEREAS it is provided by section 33 of the Income Tax Ordinance (as adapted by the Adaptation of Laws Order, 1954) that if the Governor-General in Council by order declares that arrangements specified in the order have been made with the Government of any territory outside Nigeria 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 16th day of April, 1945 and a Protocol thereto dated the 6th day of June, 1946 and a further Protocol thereto dated the 25th May, 1954 and a further Protocol thereto dated the 19th day of August, 1957, between the Government of the United Kingdom and the Government of the United States of America, arrangements were made among other things for the avoidance of double taxation :

AND WHEREAS provision is made in the said Convention as amended by the said Protocols for the application by means of a notification of extension given by either of the said Governments to the other Government and acceptance thereof by the other Government of the said Convention as amended, subject to such modifications, if any, as may be specified in the notification, to all or any of its territories for whose international relations it is responsible, which impose taxes substantially similar in character to those which are the subject of the said Convention :

AND WHEREAS by acceptance of a notification dated the 3rd day of December, 1958, the said Convention as amended, with certain modifications, was applied to the Federation of Nigeria :

NOW, THEREFORE, in the exercise of the powers conferred by section 33 of the Income Tax Ordinance, the Governor-General, after consultation with the Council of Ministers, has made the following order—

1. This Order may be cited as the Income Tax (Double Taxation Relief) (U.S.A.) Order, 1958.

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 the United States of America ;

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

FIRST SCHEDULE

PART I.—CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA 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 United States of America,

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 the Earl of Halifax, K.G., Ambassador Extraordinary in Washington ; and

The Government of the United States of America :

Mr Edward R. Stettinius, Jr., Secretary of State ;

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 the United States of America :

The Federal income taxes, including surtaxes and excess profits taxes (hereinafter referred to as United States tax).

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

The income tax (including surtax), the excess profits tax and the national defence contribution (hereinafter referred to as United Kingdom tax).

(2) The present Convention shall also apply to any other taxes of a substantially similar character imposed by either Contracting Party subsequently to the date of signature of the present Convention or by the Government of any territory to which the present Convention is extended under Article XXII.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires—

(a) The term "United States" means the United States of America, and when used in a geographical sense means the States, the Territories of Alaska and of Hawaii, and the District of Columbia.

(b) The term "United Kingdom" means Great Britain and Northern Ireland, excluding the Channel Islands and the Isle of Man.

(c) The terms "territory of one of the Contracting Parties" and "territory of the other Contracting Party" mean the United States or the United Kingdom as the context requires.

(d) The term "United States corporation" means a corporation, association or other like entity created or organised in or under the laws of the United States.

(e) The term "United Kingdom corporation" means any kind of juridical person created under the laws of the United Kingdom.

(f) The terms "corporation of one Contracting Party" and "corporation of the other Contracting Party" mean a United States corporation or a United Kingdom corporation as the context requires.

(g) The term "resident of the United Kingdom" means any person (other than a citizen of the United States or a United States corporation) who is resident in the United Kingdom for the purposes of United Kingdom tax and not resident in the United States for the purposes of United States tax. A corporation is to be regarded as resident in the United Kingdom if its business is managed and controlled in the United Kingdom.

(h) The term "resident of the United States" means any individual who is resident in the United States for the purposes of United States tax and not resident in the United Kingdom for the purposes of United Kingdom tax, and any United States corporation and any partnership created or organised in or under the laws of the United States, being a corporation or partnership which is not resident in the United Kingdom for the purposes of United Kingdom tax.

(i) The term "United Kingdom enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United Kingdom.

(j) The term "United States enterprise" means an industrial or commercial enterprise or undertaking carried on by a resident of the United States.

(k) The terms "enterprise of one of the Contracting Parties" and "enterprise of the other Contracting Party" mean a United States enterprise or a United Kingdom enterprise, as the context requires.

(l) The term "permanent establishment" when used with respect to an enterprise of one of the Contracting Parties 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. An enterprise of one of the Contracting Parties shall not be deemed to have a permanent establishment in the territory of the other Contracting Party merely because it carries on business dealings in the territory of such other Contracting Party through a *bona fide* commission agent, broker or custodian acting in the ordinary course of his business as such. The fact that an enterprise of one of the Contracting Parties maintains in the territory of the other Contracting Party a fixed place of business exclusively for the purchase of goods or merchandise shall not of itself constitute such fixed place of business a permanent establishment of such enterprise. The fact that a corporation of one Contracting Party has a subsidiary corporation which is a corporation of the other Contracting Party or which is engaged in trade or business in the territory of such other Contracting Party (whether through a permanent establishment or otherwise) shall not of itself constitute that subsidiary corporation a permanent establishment of its parent corporation.

(2) For the purposes of Articles VI, VII, VIII, IX and XIV a resident of the United Kingdom shall not be deemed to be engaged in trade or business in the United States in any taxable year unless such resident has a permanent establishment situated therein in such taxable year. The same principle shall be applied, *mutatis mutandis*, by the United Kingdom in the case of a resident of the United States.

(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 of that Contracting Party relating to the taxes which are the subject of the present Convention.

ARTICLE III

(1) A United Kingdom enterprise shall not be subject to United States tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United States through a permanent establishment situated therein. If it is so engaged, United States tax may be imposed upon the entire income of such enterprise from sources within the United States.

(2) A United States enterprise shall not be subject to United Kingdom tax in respect of its industrial or commercial profits unless it is engaged in trade or business in the United Kingdom through a permanent establishment situated therein. If it is so engaged, United Kingdom tax may be imposed upon the entire income of such enterprise from sources within the United Kingdom; Provided that nothing in this paragraph shall affect any provisions of the law of the United Kingdom regarding the imposition of United Kingdom excess profits tax and national defence contribution in the case of inter-connected companies.

(3) Where an enterprise of one of the Contracting Parties is engaged in trade or business in the territory of the other Contracting Party through a permanent establishment situated therein, there shall be attributed to such permanent establishment the industrial or commercial profits which it might be expected to derive 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, and the profits so attributed shall, subject to the law of such other Contracting Party, be deemed to be income from sources within the territory of such other Contracting Party.

(4) In determining the industrial or commercial profits from sources within the territory of one of the Contracting Parties of an enterprise of the other Contracting Party, no profits shall be deemed to arise from the mere purchase of goods or merchandise within the territory of the former Contracting Party by such enterprise.

ARTICLE IV

Where an enterprise of one of the Contracting Parties, by reason of its participation in the management, control or capital of an enterprise of the other Contracting Party, makes with or imposes on the latter, in their commercial or financial relations, conditions different from those which would be made with an independent enterprise, 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) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which an individual (other than a citizen of the United States) resident in the United Kingdom or a United Kingdom corporation derives from operating ships documented or aircraft registered under the laws of the United Kingdom, shall be exempt from United States tax.

(2) Notwithstanding the provisions of Articles III and IV of the present Convention, profits which a citizen of the United States not resident in the United Kingdom or a United States corporation derives from operating ships documented or aircraft registered under the laws of the United States, shall be exempt from United Kingdom tax.

(3) This Article shall be deemed to have superseded, on and after the first day of January, 1945, as to United States tax, and on and after the 6th day of April, 1945, as to United Kingdom tax, the arrangements relating to reciprocal exemption of shipping profits from income tax effected between the Government of the United States and the Government of the United Kingdom by exchange of Notes dated August 11, 1924, November 18, 1924, November 26, 1924, January 15, 1925, February 13, 1925, and March 16, 1925, which shall accordingly cease to have effect.

ARTICLE VI

(1) The rate of United States tax on dividends derived from a United States corporation by a resident of the United Kingdom who is subject to United Kingdom tax on such dividends and not engaged in trade or business in the United States shall not exceed 15 per cent: Provided that such rate of tax shall not exceed five per cent if such resident is a corporation controlling, directly or indirectly, at least 95 per cent of the entire voting power in the corporation paying the dividend, and not more than 25 per cent of the gross income of such paying corporation is derived from interest and dividends, other than interest and dividends received from its own subsidiary corporations. Such reduction of the rate to five per cent shall not apply if the relationship of the two corporations has been arranged or is maintained primarily with the intention of securing such reduced rate.

(2) Dividends derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such dividends and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

(3) Either of the Contracting Parties may terminate this Article by giving written notice of termination to the other Contracting Party, through diplomatic channels, on or before the thirtieth day of June in any year after the year 1945, and in such event paragraph (1) hereof shall cease to be effective as to United States tax on and after the first day of January, and paragraph (2) hereof shall cease to be effective as to United Kingdom tax on and after the 6th day of April, in the year next following that in which such notice is given.

ARTICLE VII

(1) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such interest and not engaged in trade or business in the United States, shall be exempt from United States tax; but such exemption shall not apply to such interest paid by a United States corporation to a corporation resident in the United Kingdom controlling, directly or indirectly, more than 50 per cent of the entire voting power in the paying corporation.

(2) Interest (on bonds, securities, notes, debentures, or on any other form of indebtedness) derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such interest and not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom tax; but such exemption shall not apply to such interest paid by a corporation resident in the United Kingdom to a United States corporation controlling, directly or indirectly, more than 50 per cent of the entire voting power in the paying corporation.

ARTICLE VIII

(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts and not engaged in trade or business in the United States, shall be exempt from United States tax.

(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks, and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts and not engaged in trade or business in the United Kingdom, shall be exempted from United Kingdom tax.

(3) For the purposes of this Article the term "royalties" shall be deemed to include rentals in respect of motion picture films.

ARTICLE IX

(1) The rate of United States tax on royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and on rentals from real property or from an interest in such property, derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax with respect to such royalties or rentals and not engaged in trade or business in the United States, shall not exceed 15 per cent: Provided that any such resident may elect for any taxable year to be subject to United States tax as if such resident were engaged in trade or business in the United States.

(2) Royalties in respect of the operation of mines or quarries or of other extraction of natural resources, and rental from real property or from an interest in such property, derived from sources within the United Kingdom by an individual who is (a) a resident of the United States, (b) subject to United States tax with respect to such royalties and rentals, and (c) not engaged in trade or business in the United Kingdom, shall be exempt from United Kingdom surtax.

ARTICLE X

(1) Any salary, wage, similar remuneration, or pension, paid by the Government of the United States to an individual (other than a British subject who is not also a citizen of the United States) in respect of services rendered to the United States in the discharge of governmental functions, shall be exempt from United Kingdom tax.

(2) Any salary, wage, similar remuneration, or pension, paid by the Government of the United Kingdom to an individual (other than a citizen of the United States who is not also a British subject) in respect of services rendered to the United Kingdom in the discharge of governmental functions, shall be exempt from United States tax.

(3) 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 Contracting Parties for purposes of profit.

ARTICLE XI

(1) An individual who is a resident of the United Kingdom shall be exempt from United States tax upon compensation for personal (including professional) services performed during the taxable year within the United States if (a) he is present within the United States for a period or periods not exceeding in the aggregate 183 days during such taxable year, and (b) such services are performed for or on behalf of a person resident in the United Kingdom.

(2) An individual who is a resident of the United States shall be exempt from United Kingdom tax upon profits, emoluments or other 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) such services are performed for or on behalf of a person resident in the United States.

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

ARTICLE XII

(1) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United States by an individual who is a resident of the United Kingdom shall be exempt from United States tax.

(2) Any pension (other than a pension to which Article X applies), and any life annuity, derived from sources within the United Kingdom by an individual who is a resident of the United States shall be exempt from United Kingdom tax.

(3) The term "life 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.

ARTICLE XIII

(1) Subject to section 131 of the United States Internal Revenue Code as in effect on the first day of January, 1945, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose, the recipient of a dividend paid by a corporation

which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom income tax appropriate to such dividend if such recipient elects to include in his gross income for the purposes of United States tax the amount of such United Kingdom income tax.

(2) Subject to such provisions (which shall not affect the general principle hereof) as may be enacted in the United Kingdom, United States tax payable in respect of income from sources within the United States shall be allowed as a credit against any United Kingdom tax payable in respect of that income. Where such income is an ordinary dividend paid by a United States corporation, such credit shall take into account (in addition to any United States income tax deducted from or imposed on such dividend) the United States income tax imposed on such corporation 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, such tax on profits shall likewise be taken into account in so far as the dividend exceeds such fixed rate.

(3) For the purposes of this Article, compensation, profits, emoluments and other remuneration for personal (including professional) services shall be deemed to be income from sources within the territory of the Contracting Party where such services are performed.

ARTICLE XIV

A resident of the United Kingdom not engaged in trade or business in the United States shall be exempt from United States tax on gains from the sale or exchange of capital assets.

ARTICLE XV

Dividends and interest paid on or after the first day of January, 1945, by a United Kingdom corporation shall be exempt from United States tax except where the recipient is a citizen of or a resident of the United States or a United States corporation.

ARTICLE XVI

A United Kingdom corporation shall be exempt from United States tax on its accumulated or undistributed earnings, profits, income or surplus, if individuals who are residents of the United Kingdom control, directly or indirectly, throughout the last half of the taxable year, more than 50 per cent of the entire voting power in such corporation.

ARTICLE XVII

(1) The United States income tax liability for any taxable year beginning prior to the 1st January, 1936, of any individual (other than a citizen of the United States) resident in the United Kingdom, or of any United Kingdom corporation, remaining unpaid on the date of signature of the present Convention, may be adjusted on a basis satisfactory to the United States Commissioner of Internal Revenue: Provided that the amount to be paid in settlement of such liability shall not exceed the amount of the liability which would have been determined if—

(a) the United States Revenue Act of 1936 (except in the case of a United Kingdom corporation in which more than 50 per cent of the entire voting power was controlled, directly or indirectly, throughout the latter half of the taxable year, by citizens or residents of the United States), and

(b) Articles XV and XVI of the present Convention, had been in effect for such year. If the taxpayer was not, within the meaning of such Revenue Act, engaged in trade or business in the United States and had no office or place of business therein during the taxable year, the amount of interest and penalties shall not exceed 50 per cent of the amount of the tax with respect to which such interest and penalties have been computed.

(2) The United States income tax unpaid on the date of signature of the present Convention for any taxable year beginning after the thirty-first day of December, 1935, and prior to the first day of January, 1945, in the case of an individual (other than a citizen of the United States) resident of the United Kingdom, or in the case of any United Kingdom corporation shall be determined as if the provisions of Articles XV and XVI of the present Convention had been in effect for such taxable year.

(3) The provisions of paragraph (1) of this Article shall not apply—

(a) unless the taxpayer files with the Commissioner of Internal Revenue on or before the thirty-first day of December, 1947, a request that such tax liability be so adjusted and furnishes such information as the Commissioner may require; or

(b) in any case in which the Commissioner is satisfied that any deficiency in tax is due to fraud with intent to evade the tax.

ARTICLE XVIII

A professor or teacher from the territory of one of the Contracting Parties who visits the territory of the other Contracting Party for the purpose of teaching, for a period not exceeding two years, at a university, college, school or other educational institution in the territory of such other Contracting Party shall be exempted by such other Contracting Party from tax on his remuneration for such teaching for such period.

ARTICLE XIX

A student or business apprentice from the territory of one of the Contracting Parties who is receiving full-time education or training in the territory of the other Contracting Party shall be exempted by such other Contracting Party from tax on payments made to him by persons within the territory of the former Contracting Party for the purposes of his maintenance, education or training.

ARTICLE XX

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

(2) As used in this Article, the term "taxation authorities" means, in the case of the United States, the Commissioner of Internal Revenue or his authorised representative; in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative; and, in the case of any territory to which the present Convention is extended under Article XXII, the competent authority for the administration in such territory of the taxes to which the present Convention applies.

ARTICLE XXI

(1) The nationals of one of the Contracting Parties shall not, while resident in the territory of the other Contracting Party, be subjected therein to other or more burdensome taxes than are the nationals of such other Contracting Party resident in its territory.

(2) The term "nationals" as used in this Article means—

(a) In relation to the United Kingdom, all British subjects and British protected persons, from the United Kingdom or any territory with respect to which the present Convention is applicable by reason of extension made by the United Kingdom under Article XXII; and

(b) In relation to the United States, United States citizens, and all persons under the protection of the United States, from the United States or any territory to which the present Convention is applicable by reason of extension made by the United States under Article XXII;

and includes all legal persons partnerships and associations deriving their status as such from, or created or organised under, the laws in force in any territory of the Contracting Parties to which the present Convention applies.

(3) In this Article the word "taxes" means taxes of every kind or description, whether national, federal, state, provincial or municipal.

ARTICLE XXII

(1) Either of the Contracting Parties may, at the time of exchange of instruments of ratification or thereafter while the present Convention continues in force, by a written notification of extension given to the other Contracting Party through diplomatic channels, declare its desire that the operation of the present Convention shall extend to all or any of its colonies, overseas territories, protectorates, or territories in respect of which it exercises a mandate, which impose taxes substantially similar in character to those which are the subject of the present Convention. The present Convention shall apply to the territory or territories named in such notification on the date or dates specified in the notification (not being less than sixty days from the date of the notification) or, if no date is specified in respect of any such territory, on the sixtieth day after the date of such notification, unless, prior to the date on which the Convention would otherwise become applicable to a particular territory, the Contracting Party to whom notification is given shall have informed the other Contracting Party in writing through diplomatic channels that it does not accept such notification as to that territory. In the absence of such extension, the present Convention shall not apply to any such territory.

(2) At any time after the expiration of one year from the entry into force of an extension under paragraph (1) of this Article, either of the Contracting Parties may, by written notice of termination given to the other Contracting Party through diplomatic channels, terminate the application of the present Convention to any territory to which it has been extended under paragraph (1), and in such event the present Convention shall cease to apply, six months after the date of such notice, to the territory or territories named therein, but without affecting its continued application to the United States, the United Kingdom or to any other territory to which it has been extended under paragraph (1) hereof.

(3) In the application of the present Convention in relation to any territory to which it is extended by notification by the United Kingdom or the United States references to the "United Kingdom" or, as the case may be, the "United States" shall be construed as references to that territory.

(4) The termination in respect of the United States or the United Kingdom of the present Convention under Article XXIV or of Article VI shall, unless otherwise expressly agreed by both Contracting Parties, terminate the application of the present Convention or, as the case may be, that Article to any territory to which the Convention has been extended by the United States or the United Kingdom.

(5) The provisions of the preceding paragraphs of this Article shall apply to the Channel Islands and the Isle of Man as if they were colonies of the United Kingdom.

ARTICLE XXIII

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

(2) Upon exchange of ratifications, the present Convention shall have effect—

(a) as respects United States tax, for the taxable years beginning on or after the first day of January, 1945;

(b) (i) as respects United Kingdom income tax, for the year of assessment beginning on the 6th day of April, 1945, and subsequent years; (ii) as respects United Kingdom surtax, for the year of assessment beginning on the 6th day of April, 1944, and subsequent years; and (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April, 1945, and for the unexpired portion of any chargeable accounting period current at that date.

ARTICLE XXIV

(1) The present Convention shall continue in effect indefinitely but either of the Contracting Parties may, on or before the 30th day of June in any year after the year 1946, give to the other Contracting Party, through diplomatic channels, notice of termination and, in such event, the present Convention shall cease to be effective—

(a) as respects United States tax for the taxable years beginning on or after the first day of January in the year next following that in which such notice is given;

(b) (i) as respects United Kingdom income tax, for any year of assessment beginning on or after the 6th day of April in the year next following that in which such notice is given; (ii) as respects United Kingdom surtax, for any year of assessment beginning on or after the 6th day of April in the year in which such notice is given; and (iii) as respects United Kingdom excess profits tax and national defence contribution, for any chargeable accounting period beginning on or after the first day of April in the year next following that in which such notice is given and for the unexpired portion of any chargeable accounting period current at that date.

(2) The termination of the present Convention or of any Article thereof shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting Parties.

In witness whereof the above-mentioned Plenipotentiaries have signed the present Convention and have affixed thereto their seals.

DONE at Washington, in duplicate, on the sixteenth day of April, one thousand nine hundred and forty-five,

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

(L.S.)

HALIFAX

For the Government of the United States of America:

(L.S.)

E. R. STETTINIUS, JR

PART II.—PROTOCOL

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America.

Desiring to conclude a supplementary Protocol modifying in certain respects the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income which was signed at Washington on April 16th, 1945.

Have agreed as follows:

ARTICLE I

Paragraph (3) of Article XI of the Convention of April 16th, 1945, for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income shall be deemed to be deleted and of no effect.

ARTICLE II

This Protocol, which shall be regarded as an integral part of the said Convention, shall be ratified and the instruments of ratification thereof shall be exchanged at Washington.

IN WITNESS WHEREOF the undersigned Plenipotentiaries, being authorized thereto by their respective Governments, have signed this Protocol and have affixed thereto their seals.

DONE at Washington, in duplicate, this sixth day of June, 1946.

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

JOHN BALFOUR,
His Majesty's
Envoy Extraordinary and Minister Plenipotentiary
in Washington

For the Government of the United States of America:

JAMES F. BYRNES
Secretary of State
of the United States of America

PART III. SUPPLEMENTARY PROTOCOL AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON THE 16TH APRIL, 1945, AS MODIFIED BY THE SUPPLEMENTARY PROTOCOL, SIGNED AT WASHINGTON ON THE 6TH JUNE, 1946

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America.

Desiring to conclude a further supplementary Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on the 16th April, 1945, as modified by the Supplementary Protocol, signed at Washington on the 6th June, 1946,

Have agreed as follows:

ARTICLE I

Paragraph (1) of Article XXII of the Convention of the 16th April, 1945, for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income is hereby amended to read as follows:

"(1) Either of the Contracting Parties may, at any time while the present Convention continues in force, by a written notification given to the other Contracting Party through the diplomatic channel, declare its desire that the operation of the present Convention, either in whole or in part or with such modifications as may be found necessary for special application in a particular case, shall extend to all or any of its territories for whose international relations it is responsible, which impose taxes substantially similar in character to those which are the subject of the present Convention. When the other Contracting Party has, by a written communication through the diplomatic channel, signified to the first Contracting Party that such notification is accepted in respect of such territory or territories, the present Convention, in whole

or in part or with such modifications as may be found necessary for special application in a particular case, as specified in the notification, shall apply to the territory or territories named in the notification on and after the date or dates specified therein. None of the provisions of the present Convention shall apply to any such territory in the absence of such acceptance in respect of that territory."

ARTICLE II

This supplementary Protocol, which shall be regarded as an integral part of the said Convention, shall be ratified and the instruments of ratification thereof shall be exchanged in London.

IN WITNESS WHEREOF the undersigned, being authorized thereto by their respective Governments, have signed this supplementary Protocol and have affixed thereto their seals.

DONE in duplicate at Washington this twenty-fifth day of May, 1954.

For the Government of the United Kingdom of Great Britain* and Northern Ireland :

ROGER MAKINS,
Her Majesty's
Ambassador Extraordinary and
Plenipotentiary at Washington

For the Government* of the United States of America :

JOHN FOSTER DULLES,
Secretary of State of the
United States of America

PART IV.—SUPPLEMENTARY PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE UNITED STATES OF AMERICA AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME, SIGNED AT WASHINGTON ON THE 16TH APRIL, 1945, AS MODIFIED BY THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON THE 6TH JUNE, 1946 AND BY THE SUPPLEMENTARY PROTOCOL SIGNED AT WASHINGTON ON THE 25TH MAY, 1954

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

Desiring to conclude a further supplementary Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at Washington on the 16th April, 1945, as modified by the supplementary Protocol signed at Washington on the 6th June 1946 and by the supplementary Protocol signed at Washington on the 25th May, 1954,

Have agreed as follows :

ARTICLE I

Paragraphs (1) and (2) of Article VIII of the Convention of the 16th April 1945 for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on income are hereby amended to read as follows :

"(1) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret processes and formulae, trade marks and other like property, and derived from sources within the United States by a resident of the United Kingdom who is subject to United Kingdom tax on such royalties or other amounts shall be exempt from United States tax (a) if such resident is not engaged in trade or business in the United States through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment.

"(2) Royalties and other amounts paid as consideration for the use of, or for the privilege of using, copyrights, patents, designs, secret process and formulae, trade marks and other like property, and derived from sources within the United Kingdom by a resident of the United States who is subject to United States tax on such royalties or other amounts shall be exempt from United Kingdom tax (a) if such resident is not engaged in trade or business in the United Kingdom through a permanent establishment situated therein or (b) if such resident is so engaged, the royalties or other amounts are not directly associated with the business carried on through that permanent establishment."

ARTICLE II

Paragraph (1) of Article XIII of the said Convention is hereby amended to read as follows :

"(1) Subject to Sections 901 to 905 of the United States Internal Revenue Code as in effect on the 1st day of January, 1956, United Kingdom tax shall be allowed as a credit against United States tax. For this purpose

(a) the recipient of a dividend paid by a corporation which is a resident of the United Kingdom shall be deemed to have paid the United Kingdom tax appropriate to such dividend, and

(b) the recipient of any royalty or other amount coming within the scope of Article VIII of the present Convention shall be deemed to have paid any United Kingdom tax legally deducted from the royalty or other amount by the person by or through whom any payment thereof is made,

if the recipient of the dividend or royalty or other amount, as the case may be, elects to include in his gross income for the purposes of United States tax the amount of such United Kingdom income tax."

ARTICLE III

(1) This supplementary Protocol shall be ratified and the instruments of ratification shall be exchanged at London as soon as possible.

(2) This supplementary Protocol shall enter into force upon the exchange of instruments of ratification and shall thereupon have effect—

(a) In the United Kingdom :

(i) as respects income tax and surtax for any year of assessment beginning on or after 6th April, 1956 ;

(ii) as respects profits tax for any chargeable accounting period beginning on or after the 1st April, 1956, and for the unexpired portion of any chargeable accounting period current at that date.

(b) In the United States :

As respects taxable years beginning on or after the 1st January, 1956.

IN WITNESS WHEREOF the undersigned, being authorised thereto by their respective Governments, have signed this supplementary Protocol and have affixed thereto their seals.

DONE in duplicate at Washington this nineteenth day of August, 1957.

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

(L.S.)

HAROLD CACCIA

For the Government of the United States of America :

(L.S.)

JOHN FOSTER DULLES

SECOND SCHEDULE

APPLICATION OF THE CONVENTION AND PROTOCOLS

1. (a) The provisions of the Convention and Protocols incorporated in the First Schedule to this Order shall apply as modified below—

(i) as if the Contracting parties were the Government of the Federation of Nigeria and the Government of the United States of America;

(ii) as if the tax concerned in the case of the Federation of Nigeria were the income tax;

(iii) as if references to the date of signature were reference to the 3rd day of December, 1958; and

(iv) as if references to the 6th day of April were references to the 1st day of April.

(b) The extension shall have effect in the Federation of Nigeria as respects tax for the year of assessment next following that in which the last of those measures shall have been taken in the United States of America and the Federation of Nigeria necessary to give the extension the force of law in the United States of America and the Federation of Nigeria and for subsequent years of assessment and will have effect in the United States of America as respects United States tax for the taxable year beginning on or after the 1st day of January next following the date on which the last of those measures shall have been taken.

MODIFICATIONS OF THE CONVENTION

2. (a) In Article VI (2) the words "exempt from United Kingdom Surtax" shall be understood for the purposes of the extension as though they read "shall not be liable to any tax imposed by any law enacted by the Legislature of the Federation of Nigeria or having effect as if it had been so enacted other than tax imposed with respect to the profits or earnings of the corporation out of which such dividends are paid".

(b) In Article IX (2) the words "shall be exempted from United Kingdom Surtax" shall be understood for the purposes of this extension as though they read "shall not be liable to tax imposed by any law enacted by the Legislature of the Federation of Nigeria or having effect as if it had been so enacted at a rate in excess of the rate applicable to a company".

(c) Article VII, XIV and XVI shall be deemed to be deleted.

MADE at Lagos this 23rd day of December, 1958.

MAURICE JENKINS,
Acting Deputy Secretary to the
Council of Ministers

EXPLANATORY NOTE

Under the Convention, as amended, between the United Kingdom and the United States of America as set out in the First Schedule to this Order, and as extended to have effect between the Government of the Federation of Nigeria and the Government of the U.S.A. subject to the modifications set out in the Second Schedule to this Order, certain classes of income are either exempt or the rate of tax thereon is restricted or double tax relief is given by the appropriate Government.

Provision is included for the exchange of information between the taxation authorities of the two Governments.

L.N. 208 of 1958

CUSTOMS ORDINANCE (CHAPTER 48)

Open General Import Licence (Dollar Area)

Commencement : 1st January, 1959

In exercise of the powers conferred by section 4 of the Control of Imports Order in Council, 1950, the Import Licensing Authority has granted the following general licence—

1. This licence may be cited as the Open General Import Licence (Dollar Area), 1958, and shall come into operation on the 1st January, 1959.

Citation and commencement.

2. Subject to the conditions specified in this licence, the importation from any of the countries named in the First Schedule of the goods set out in the Second Schedule is hereby authorised.

General licence.

3. This licence is granted subject to the following conditions :—

Conditions.

(i) that the goods shall be imported through an approved port, customs airport or customs post or by post, or in accordance with the provision of regulation 131 of the Customs Regulations ;

(ii) that the goods originate in one of the countries named in the First Schedule ;

(Vol. VIII, p. 388).

(iii) that the importer shall produce, at the time of importation, a certificate of origin in respect of the goods in such form as the Comptroller of Customs and Excise may from time to time approve ;

(iv) that the goods fall within the description set out in the Import List published in the Gazette of the 24th September, 1953, as Government Notice No. 1361 of 1953 (as amended or replaced from time to time) under the classification specified in relation thereto in the Second Schedule.

4. Nothing in this licence shall be deemed to authorise the importation of any goods the importation of which is prohibited or restricted by any written law.

Saving.

FIRST SCHEDULE

COUNTRIES OF ORIGIN COVERED BY THIS LICENCE

Bolivia, Canada, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Republic of Honduras, Liberia, Mexico, Nicaragua, Panama, Philippines, United States of America, Venezuela.

SECOND SCHEDULE

GOODS WHICH MAY BE IMPORTED UNDER THIS LICENCE

(The references in this Schedule to a division, group or item are references to the corresponding division, group or item in the Import List published in Government Notice No. 1361 of 1953 as amended from time to time)

SECTION 0—FOOD

Description	Group	Item
<i>Division 03—Fish and Fish Preparations</i>		
Canned salmon	032	XX0/2
<i>Division 04—Cereals and Cereal Preparations</i>		
Wheat and spelt (including meslin) unmilled	041	010
Rice, whether in the husk or not	042	XX0
Barley, unmilled	043	010
Maize (corn) unmilled	044	010
Rye and oats, unmilled; Sorghums	045	XX0
Meal and flour of wheat and spelt (including meslin)	046	010/1
Maize germ meal, maize meal, barley flour, oat flour and meal, rice flour and meal	047	XX0/1
Pearled barley, rolled oats, flaked corn, wheat germ	048	010
Malt	048	020
<i>Division 05—Fruits and Vegetables</i>		
Beans, peas, lentils and other legumes (pulses) dry, including split	054	020
<i>Division 09—Miscellaneous Food Preparations</i>		
Margarine; animal, vegetable or mixed	091	010
Yeast	099	090/2

SECTION 1—BEVERAGES AND TOBACCO

NIL

SECTION 2—CRUDE MATERIALS, MAINLY INEDIBLE EXCEPT FUELS

<i>Division 27—Crude Fertilisers and Crude Materials, excluding Coal Petroleum and Precious Stones</i>		
Fertilisers, crude	271	All
Other crude minerals, excluding coal, petroleum and precious stones	272	All
<i>Division 28—Metalliferous Ores and Metal Scrap</i>		
Metalliferous ores and metal scrap	28X	All
<i>Division 29—Animal and Vegetable Crude Materials—Inedible N.E.S.</i>		
Plants and parts of plants for use in dyeing and tanning	292	XX9

SECTION 3—MINERAL FUELS, LUBRICANTS AND RELATED MATERIALS

<i>Division 31—Mineral Fuels, Lubricants and Related Materials</i>		
Mineral jelly, petroleum	313	051
Petroleum bitumen	313	091
Petroleum coke	313	099

SECTION 4—ANIMAL AND VEGETABLE OILS AND FATS

NIL

SECTION 5—CHEMICALS

Division 51—Chemical Elements and Compounds

Inorganic chemicals, except calcium carbide (511-XX1), radioactive elements, uranium, thorium and their compounds (511-XX9)	511	All
Organic chemicals except dycstuffs, intermediates, uranium and thorium compounds and sulphonamides	512	All

Division 53—Dyeing, Tanning and Colouring Materials

Dyeing extracts (vegetable and animal); tanning extracts, including synthetic tanning materials	532	XX0
Except printers' ink (533-020) and radioactive materials	533	All

Division 54—Medicinal and Pharmaceutical Products

Opium alkaloids, cocaine, caffeine, quinine and other alkaloids, salts and their derivatives	541	040
Raw or simply prepared drugs but not medicinal and pharmaceutical preparations	541	099

Division 55—Essential Oils and Perfume Materials; Toilet, Polishing and Cleansing Preparations

Essential oils, synthetic perfume and flavour materials and concentrates and enflourage greases but excluding aqueous distillates or natural perfumes	551	XX0
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Division 56—Fertilisers, Manufactured

Fertilisers, manufactured, excluding products in tablets, lozenges and similar prepared forms	561	All
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Division 59—Explosives and Miscellaneous Chemical Materials and Products

Propellant powders and prepared explosives n.e.s. in the Customs Import List	591	019
Fuses, primers, detonators and percussion caps, except railway track torpedoes	591	020
Synthetic plastic materials in blocks, sheets and other primary forms, except goods packed for retail sale, or printed or otherwise surface worked	599	010

SECTION 6—MANUFACTURED GOODS CLASSIFIED

CHIEFLY BY MATERIAL

<i>Description</i>	<i>Group</i>	<i>Item</i>
<i>Division 61—Leather, Leather Manufactures and Dressed Furs</i>		
Machinery belting, leather	612	XX0
<i>Division 62—Rubber Manufactures</i>		
Machinery belting, rubber	629	090
<i>Division 64—Paper, Paperboard and Manufactures thereof</i>		
Newsprint paper	641	010
Printing and writing papers	641	020
Common packing and wrapping paper	641	030
Cigarette paper, blotting paper, filter paper and blocks, paper and paperboard, not elsewhere specified	641	XX0

SECTION 6—MANUFACTURED GOODS CLASSIFIED

CHIEFLY BY MATERIAL—continued

<i>Description</i>	<i>Group</i>	<i>Item</i>
<i>Division 66—Non-metallic Mineral Manufactures</i>		
Lime	661	010
Cement	661	020
Building and monumental (dimension) stone, worked ..	661	XX9
Grinding and polishing wheels and stones; abrasive cloths and papers, and similar articles	663	XX1
Asbestos and mica insulators, carbons (furnace, lighting and battery), electrodes	663	XX9
<i>Division 68—Base Metals</i>		
Girders, beams, joists and pillars (fabricated)	681	040
Plates, sheets and universals, uncoated	681	050
Hoop and strip	681	060
Tinplate, tinned sheets, terneplate and terne sheets ..	681	072
Railway rails	681	080
Railway track construction accessories to rails	681	110
Wire, wire cable and wire rope	681	120
Steel tubes and fittings, welded or drawn	681	130
Other iron and steel items, not elsewhere specified except castings and forgings	681	XX0
Copper electrical wires and cables	682	XX1
Copper and alloys of copper, worked except forgings ..	682	XX9
Nickel and nickel alloys, worked except forgings	683	XX0
Aluminium and aluminium alloys, worked except forgings ..	684	XX9
Lead and lead alloys, except forgings	685	XX0
Zinc and zinc alloys, except forgings	686	XX0
Tin and tin alloys, except forgings	687	XX0
Non-ferrous base metals and alloys, not elsewhere specified except forgings	689	XX0
<i>Division 69—Manufactures of Metals</i>		
Girders, beams, joists and pillars fabricated	699	019
Wire, wire cable and wire rope	699	030
Cable (electrical) and wire	699	040
Nails, bolts, nuts, washers, rivets and screws	699	070
Safes, strong-room fittings and strong boxes	699	110
Tools for machines	699	121
Axes and hatchets	699	122
Matchets	699	123
Hand tools and hand implements	699	129

SECTION 7—MACHINERY AND TRANSPORT EQUIPMENT

Division 71—Machinery other than Electric

Power generating machinery, except aircraft engines and parts, and of a kind used for domestic purposes ..	711	All
Agricultural machinery and appliances for preparing and cultivating the soil	712	XX1
Tractors, other than steam	713	All
Office machinery, except wire or tape recording machines ..	714	All
Metal working machinery	715	All
Mining, construction and other industrial machinery, except:—	716	All
Pumps for liquids	716-010	

Description	Group	Item
<i>Division 71—Machinery other than Electric—continued</i>		
Boring machinery	716-037	
Household sewing machines, complete ..	716-112	
Parts of household sewing machines ..	716-119.1	
Air conditioning and refrigerating equipment	716-121	
Parts of air conditioning and refrigerating equipment	716-129	
Oil (not mineral) extraction machinery ..	716-131	
Household machinery and appliances not elsewhere specified	716-136	

Division 72—Electric Machinery, Apparatus and Appliances

- (a) Electrical generating sets and battery charging sets. Electric machinery, other than of a kind used in motor vehicles, ships, boats or aircraft, the following: converting machinery, generators, motors, rectifiers, starting and control gear for electric motors, switchboards, switch-gear other than articles incorporating timing devices, transformers 721 Various
- (b) Electric batteries
- (c) Echo sounding apparatus
- (d) Apparatus (other than radio) for telegraphy and telephony
- (e) Railway signalling equipment
- (f) Electric fans, non-domestic
- (g) Portable power tools
- (h) Insulated cables and wire for electricity 721 Various
- (i) Accumulators, lead acid and alkaline

SECTION 8. - MISCELLANEOUS MANUFACTURED ARTICLES

Division 86—Professional, Scientific and Controlling Instruments, Photographic and Optical Goods, Watches and Clocks

Engineers' tools, gauges and measuring instruments ..	861	090
Press photographs	862	010
Exposed newsreel film (current)	863	010

Division 89—Miscellaneous Manufactured Articles not elsewhere specified

Press photographs, maps and plans, manuscripts and hydrographic charts	892	XX9
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SECTION 9. - MISCELLANEOUS TRANSACTIONS AND COMMODITIES NOT ELSEWHERE SPECIFIED

Division 92—Live Animals, not for Food

Live animals (not for food), other than horses, asses and mules	921	090
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J. B. DARAMOLA,
Import Licensing Authority
Federal Department of Commerce and
Industries

Lagos, 16th December, 1958.

NOTES

(These notes do not form part of the licence)

1. Payment for goods imported under this Open General Licence is subject to the conditions prescribed in Nigerian Exchange Control Notice No. 13 (Second issue).

2. Approved ports include all ports and approved places of unloading, appointed by the Governor-General under section 2 of the Customs Ordinance (Cap. 48). The approved ports are at present Lagos, Burutu, Warri, Sapele, Degema, Port Harcourt, Calabar, Victoria and Tiko.

3. Customs airports are defined in Article 60 of the Colonial Air Navigation Order, 1955, published as Legal Notice No. 108 of 1955 in the Federation of Nigeria Official Gazette No. 45, Vol. 42 of the 6th October, 1955. Customs airports are at present Calabar, Kano, Lagos (Ikeja) and Maiduguri.

4. There are a number of other items included in the United Kingdom list of permitted imports from dollar countries but which, for simplification, have been omitted from this Open General Licence. The items concerned are those for which there is very little known demand in Nigeria, but any person requiring to import such items will, on application, be granted a specific import licence. Applications for specific licences should be addressed to the Import Licensing Authority, Federal Department of Commerce and Industries, Lagos, Kano, Jos, Port Harcourt, Aba, Calabar, Onitsha, Ibadan, Sapele or Akure (as appropriate).

5. It is not necessary for importers to hold this licence or to produce it to the Customs authorities. Importers are nevertheless advised to retain the Notice for reference as copies are not being distributed. A copy may be seen on application at any Custom House or Post Office.

6. The Second Schedule to this licence is to be read in conjunction with the Import List published by the Department of Customs and Excise and, in order to be covered by this licence, goods must conform with both the description and the Import List classification given in the Second Schedule.

L1888/166

L.N. 209 of 1958

INCOME TAX ADMINISTRATION ORDINANCE, 1958

(No. 39 of 1958)

Appointed Day Notice

In exercise of the powers conferred by section 1 of the Income Tax Administration Ordinance, 1958, the Minister of Finance of the Federation has appointed the 1st day of January, 1959, as the date upon which the said Ordinance shall come into operation.

R. A. CLARKE,
Permanent Secretary,
Ministry of Finance

Lagos 17th December, 1958.