

Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2010 No.

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International
Tax Enforcement (Austria) Order 2010**

Made - - - - - *[date] [Month] 2010*

At the Court at Buckingham Palace, the [date] day of [Month] 2010

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010⁽¹⁾ and section 173(7) of the Finance Act 2006⁽²⁾ and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Austria) Order 2010.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(1) 2010 c. 8.
(2) 2006 c. 25.

- (a) the arrangements specified in the Protocols set out in the Schedule to this Order, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Austria) Order 1970(3), have been made with the Government of the Republic of Austria;
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar character imposed by the laws of the Republic of Austria and for the purpose of assisting international tax enforcement; and
- (c) it is expedient that those arrangements should have effect.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF AUSTRIA AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT LONDON ON 30 APRIL 1969 AS AMENDED BY THE PROTOCOL SIGNED AT LONDON ON 17 NOVEMBER 1977 AND BY THE PROTOCOL SIGNED AT LONDON ON 18 MAY 1993

The United Kingdom of Great Britain and Northern Ireland and the Republic of Austria desiring to conclude a Protocol amending the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at London on 30 April 1969 as amended by the Protocol signed at London on 17 November 1977 and by the Protocol signed at London on 18 May 1993 (hereinafter referred to as "the Convention"),

Have agreed as follows:

ARTICLE I

Article 28 of the Convention shall be deleted and replaced by the following:

“ARTICLE 28

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Double Taxation Relief and International Tax Enforcement (Austria) Order 2010 No. 2688*

- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE II

The Contracting States shall notify to each other through diplomatic channels the completion of the procedures required by its laws for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications and shall have effect with regard to taxable periods beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Vienna on 11 September 2009 in the English and German languages, all the texts being equally authentic.

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

Simon Smith

For the Republic of Austria:

Andreas Schieder

ADDITIONAL PROTOCOL

At the signing of the Protocol amending the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed at London on 30 April 1969 as amended by the Protocol signed at London on 17 November 1977 and by the Protocol signed at London on 18 May 1993, this day concluded between the United Kingdom of Great Britain and Northern Ireland and the Republic of Austria, the undersigned have agreed that the following provisions shall form an integral part of the Protocol.

In relation to Article 28:

It is understood that

1. The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:
 - (a) the identity of the person under examination or investigation;
 - (b) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;
 - (c) the tax purpose for which the information is sought;
 - (d) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;
 - (e) to the extent known, the name and address of any person believed to be in possession of the requested information;
 - (f) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.
2. It is understood that the standard of 'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.
3. It is understood that paragraph 5 of Article 28 of the Convention does not require the Contracting States to exchange information within the meaning of that paragraph on a spontaneous or automatic basis.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Additional Protocol.

DONE in duplicate at Vienna on 11 September 2009 in the English and German languages, all the texts being equally authentic.

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

Simon Smith

For the Republic of Austria:

Andreas Schieder

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains two Protocols (“the Protocols”) which further amend a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (“the Convention”). The Convention was scheduled to the Double Taxation Relief (Taxes on Income) (Austria) Order 1969 (S.I. 1970/1947) and previously amended by the arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Austria) Order 1979 (S.I. 1979/117) and the Double Taxation Relief (Taxes on Income) (Austria) Order 1994 (S.I. 1994/768). This Order brings the Protocols into effect.

The Convention aims to eliminate the double taxation of income or gains arising in one country and paid to residents of the other country. It does this by allocating the taxing rights that each country has under its domestic law over the same income and gains, and/or by providing relief from double taxation. It also has specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The Protocols continue that approach.

The Protocols replace Article 28 of the Convention by updating the exchange of information article to bring it into line with the new international standard for exchange of information as set out in the Model Tax Convention on Income and on Capital published by the Organisation for Economic Cooperation and Development (“OECD”). They also provide an explanation as to the interpretation and understanding of Article 28 of the Convention.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Protocols.

The Protocols will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. They shall have effect for taxable periods beginning on or after 1st January of the year next following the date of entry into force.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.