

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

DRAFT STATUTORY INSTRUMENTS

2014 No.

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief (Federal
Republic of Germany) Order 2014**

Made - - - - *******

At the Court at Buckingham Palace, the *** day of *** 2014

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 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, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Federal Republic of Germany) Order 2014.

Double taxation arrangements to have effect

2. It is declared that—

- (a) the arrangements specified in the Protocol set out in the Schedule to this Order, which amend the arrangements set out in the Schedule to the Double Taxation Relief and

(1) 2010 c. 8.

International Tax Enforcement (Federal Republic of Germany) Order 2010⁽²⁾, have been made with the Federal Republic of Germany;

- (b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax, income tax and taxes of a similar character imposed by the laws of the Federal Republic of Germany; and
- (c) it is expedient that those arrangements should have effect.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL SIGNED AT LONDON ON 30 MARCH 2010

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany

Desiring to encourage the application and interpretation of the new version of Article 7 of the Model Tax Convention on Income and on Capital as adopted on 22 July 2010 by the Council of the Organisation for Economic Co-operation and Development (OECD), together with its Commentary,

Intending to harmonize the taxation rights under paragraph 1 of Article 18 of the Convention of 30 March 2010 with sub-paragraph (c) of paragraph (1) of Article 14 of the Consular Convention of 30 July 1956 between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland,

Have agreed as follows:

ARTICLE I

1. Paragraphs 1 to 6 of Article 7 shall be deleted and replaced by the following paragraphs:

- “(1) Profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other State.
- (2) For the purposes of this Article and Article 23, the profits that are attributable in each Contracting State to the permanent establishment referred to in paragraph 1 are the profits it might be expected to make, in particular in its dealings with other parts of the enterprise, if it were a separate and independent enterprise engaged in the same or similar activities under the same or similar conditions, taking into account the functions performed, assets used and risks assumed by the enterprise through the permanent establishment and through the other parts of the enterprise.
- (3) Where, in accordance with paragraph 2, a Contracting State adjusts the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States and taxes accordingly profits of the enterprise that have been charged to tax in the other State, the other Contracting State shall, to the extent necessary to eliminate double taxation on these profits, make an appropriate adjustment if it agrees with the adjustment made by the first-mentioned State; if the other Contracting State does not so agree, the Contracting States shall endeavour to eliminate any double taxation resulting therefrom by mutual agreement.”.

2. Paragraph 7 of Article 7 shall be renumbered as paragraph 4.

ARTICLE II

Paragraph 1 of Article 18 shall be deleted and replaced by the following paragraph:

- “(1) Salaries, wages and other similar remuneration, paid by a Contracting State, a “Land”, a political subdivision or a local authority of a “Land” or a Contracting State or some other legal entity under public law of that State to an individual in respect of services rendered to that State, “Land”, political subdivision or local authority or some other legal entity under public law shall be taxable only in that State. However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who is a national of that State without also being a national of the first-mentioned state.”.

ARTICLE III

Article 30 shall be deleted and replaced by the following:

“ARTICLE 30

Members of diplomatic missions and consular posts

- (1) Subject to the provisions of paragraph 2, nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.
- (2) Notwithstanding sub-paragraph (c) of paragraph (1) of Article 14 of the Consular Convention between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland signed at Bonn on 30 July 1956, paragraph 1 of Article 18 and sub-paragraph d) of paragraph 1 of Article 23 of this Convention shall apply to the official emoluments, salary, wages and allowances received by a consular employee.”.

ARTICLE IV

1. This Protocol shall be ratified; the instruments of ratification shall be exchanged as soon as possible in Berlin.
2. This Protocol shall enter into force on the day of the exchange of the instruments of ratification. The Convention as amended by this Protocol shall thereupon have effect:
 - a) in Germany:
 - aa) in respect of taxes levied for periods beginning on or after 1 January in the calendar year next following that in which this Protocol enters into force;
 - b) in the United Kingdom:

- aa) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which this Protocol enters into force;
- bb) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which this Protocol enters into force.

Done in duplicate at London on seventeenth March 2014 in the English and German languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

For the Federal Republic of Germany:

David Gauke

Jörg Ranau

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol (“the Protocol”) which amends the Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and on Capital (“the Convention”). The Convention was scheduled to the Double Taxation Relief and International Tax Enforcement (Federal Republic of Germany) Order 2010 ([S.I. 2010/2975](#)). This Order brings the Protocol into effect.

The Convention aims to eliminate double taxation on 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 Protocol continues that approach.

The Protocol amends Article 7 (Business Profits) to bring it into line with the latest approach of the Organisation for Economic Cooperation and Development (OECD) as set out in its Model Tax Convention on Income and on Capital. Article 18 (Government Service) is amended and Article 30 (Members of Diplomatic Missions and Consular Posts) is substituted to harmonise the taxation of government service income including that of consular employees with Article 14(1)(c) of the Consular Convention of 30 July 1956 between the Federal Republic of Germany and the United Kingdom of Great Britain and Northern Ireland.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Protocol.

The Protocol will enter into force on the day on which the United Kingdom and the Federal Republic of Germany exchange instruments of ratification. It will take effect in each country as follows:

- (d) in the United Kingdom:

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Double Taxation Relief (Federal Republic of Germany) Order 2014 No. 1874*

- (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which the Protocol enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the Protocol enters into force; and
- (e) in Germany:
- (i) in respect of taxes levied for periods beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

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

A Tax Information and Impact Note has not been produced for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.