

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

2018 No. 0000

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

The Double Taxation Relief (Switzerland) Order 2018

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

At the Court at Buckingham Palace, the ******* day of 2018
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 resolution of that House. Accordingly, Her Majesty, in exercising 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 (Switzerland) Order 2018.

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 further vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1978⁽²⁾, have been made with the Swiss Federal Council;

(1) 2010 c.8.
(2) S.I. 1978/1408; the arrangements scheduled to that Order were amended by the arrangements set out in the Schedules to S.I. 1982/714, 1994/3215, 2007/3465 and 2010/2689 and supplemented by the agreement specified in the Schedule to S.I. 2012/3079.

- (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 Switzerland; and
- (c) it is expedient that those arrangements should have effect.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS FEDERAL COUNCIL AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME SIGNED AT LONDON ON 8 DECEMBER 1977 AS AMENDED BY THE PROTOCOLS SIGNED AT LONDON ON 5 MARCH 1981, AT BERNE ON 17 DECEMBER 1993, AT LONDON ON 26 JUNE 2007 AND AT LONDON ON 7 SEPTEMBER 2009

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council;

Desiring to conclude a Protocol to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Income signed at London on 8 December 1977, as amended by the protocols signed at London on 5 March 1981, at Berne on 17 December 1993, at London on 26 June 2007 and at London on 7 September 2009 (hereinafter “the Convention”);

Have agreed as follows:

ARTICLE I

The following new paragraphs shall be added to the preamble of the Convention:

“Desiring to further develop their economic relationship and to enhance their cooperation in tax matters;

Intending to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States);”.

The modified preamble shall read as follows:

“The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council;

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on income;

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters;

Intending to eliminate double taxation with respect to taxes on income without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States);

Have agreed as follows:”.

ARTICLE II

Subparagraph (l) of paragraph 1 of Article 3 (General definitions) of the Convention shall be deleted.

ARTICLE III

Paragraph 2 of Article 9 (Associated enterprises) of the Convention shall be deleted and replaced by the following:

“2. Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.”.

ARTICLE IV

Paragraph 6 of Article 10 (Dividends) of the Convention shall be deleted.

ARTICLE V

Paragraph 7 of Article 11 (Interest) of the Convention shall be deleted.

ARTICLE VI

Paragraph 5 of Article 12 (Royalties) of the Convention shall be deleted.

ARTICLE VII

Paragraph 4 of Article 21 (Other income) of the Convention shall be deleted.

ARTICLE VIII

The following new paragraph 7 shall be added to Article 22 (Elimination of double taxation) of the Convention:

“7. The provisions of paragraph 2 shall not apply to income derived by a resident of Switzerland where the United Kingdom applies the provisions of this Convention to exempt such income from tax or applies the provisions of paragraph 2 of Article 10 to such income.”.

ARTICLE IX

The first sentence of Paragraph 1 of Article 24 (Mutual agreement procedure) of the Convention shall be deleted and replaced by the following:

“Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of either Contracting State.”.

ARTICLE X

The following new article shall be inserted immediately following Article 27 (Miscellaneous rules) of the Convention:

“ARTICLE 27A

Entitlement to benefits

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital gains if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”.

ARTICLE XI

1. Each of the Contracting States shall notify to the other via diplomatic channels the completion of the procedures required by its law for the bringing into force of this Protocol.

2. The Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the calendar year next following the date on which the Protocol enters into force;
 - (ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April next following the date on which the Protocol enters into force;
 - (iii) in respect of corporation tax, for any financial year beginning on or after the first day of April next following the date on which the Protocol enters into force; and

(b) in Switzerland:

- (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the calendar year next following the date on which the Protocol enters into force;
- (ii) in respect of other taxes, for taxation years beginning on or after the first day of January of the calendar year next following the date on which the Protocol enters into force.

3. Notwithstanding the provisions of paragraphs 1 and 2, the amendments made by Article IX of this Protocol shall have effect from the date of entry into force of this Protocol, without regard to the taxable period to which the matter relates.

In witness whereof the undersigned, duly authorised thereto, have signed this Protocol.

Done in duplicate at London on 30 November 2017 in the English and French languages, both being equally authentic.

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

For the Swiss Federal Council

Rt Hon Mel Stride MP

Alexandre Fasel

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to the Order contains a Protocol (“the amending Protocol”) which further amends a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council (“the Convention”).

The Convention was scheduled to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1978 (S.I. 1978/1408) and has previously been amended by the arrangements set out in the Schedules to the Double Taxation Relief (Taxes on Income) (Switzerland) Orders of 1982 (S.I. 1982/714), 1994 (S.I. 1994/3215) and 2007 (S.I. 2007/3465) and to the Double Taxation Relief and International Tax Enforcement (Switzerland) Order 2010 (S.I. 2010/2689). The Convention has also been supplemented by the agreement specified in the Schedule to the Double Taxation Relief and International Tax Enforcement (Switzerland) Order 2012 (S.I. 2012/3079). The Order brings the amending Protocol into effect.

The Convention aims to eliminate the double taxation of income and gains arising in one country and paid to residents of the other country. This is done 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. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The amending Protocol continues that approach.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the amending Protocol (“the Arrangements”). Amendments are made to the preamble to the Convention and the Articles of the Convention relating to general definitions, associated enterprises, dividends, interest, royalties, other income, elimination of double taxation and mutual agreement procedure. An Article relating to entitlement to benefits is added to the Convention.

The Arrangements will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. They will take effect as follows:

- (a) in respect of the amendments made to Article 24 (Mutual agreement procedure) of the Convention by Article IX of the amending Protocol, from the date of entry into force of the amending Protocol, without regard to the taxable period to which the matter relates,
- (b) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of January of the calendar year next following the date on which the amending Protocol enters into force,

- (c) in Switzerland, in respect of other taxes, for taxation years beginning on or after the first day of January of the calendar year next following the date on which the amending Protocol enters into force,
- (d) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after the sixth day of April next following the date on which the amending Protocol enters into force, and
 - (ii) in respect of corporation tax, for any financial year beginning on or after the first day of April next following the date on which the amending 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 the Order as it gives effect to a double taxation agreement. Double taxation agreements impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.