

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

2018 No. 0000

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International
Tax Enforcement (Ukraine) Order 2018**

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

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

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 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) to (3) 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 (Ukraine) Order 2018.

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 Protocol 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) (Ukraine) Order 1993(3) have been made with the Government of Ukraine,
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax and income tax and taxes of a similar character imposed by the laws of Ukraine and for the purposes 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 GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF UKRAINE TO AMEND THE CONVENTION BETWEEN THE GOVERNMENT OF UKRAINE AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT LONDON ON FEBRUARY 10, 1993

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ukraine,
Desiring to conclude a Protocol to amend the Convention between the Government of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital, signed at London on February 10, 1993 (hereinafter referred to as “the Convention”),
have agreed as follows:

ARTICLE 1

The preamble to the Convention shall be deleted and replaced with the following:

“The Government of Ukraine and the Government of the United Kingdom of Great Britain and Northern Ireland;

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

Intending to eliminate double taxation with respect to the taxes covered by this Convention 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 2

Article 1 “Personal Scope” of the Convention shall be deleted and replaced by the following:

“Article 1

Persons covered

1. This Convention shall apply to persons who are residents of one or both of the Contracting States.
2. For the purposes of this Convention, income or gains derived by or through an entity or arrangement that is treated as wholly or partly fiscally transparent under the tax law of either Contracting State shall be considered to be income or gains of a resident of a Contracting State but only to the extent that the income or gain is treated, for purposes of taxation by that State, as the income or gain of a resident of that State.
3. This Convention shall not affect the taxation, by a Contracting State, of its residents except with respect to the benefits granted under paragraph 2 of Article 9 and Articles 19, 20, 22, 25, 26 and 28.”.

ARTICLE 3

Subparagraph b) of paragraph 3 of Article 2 “Taxes covered” of the Convention shall be deleted and replaced by:

- “b) in the case of Ukraine:
- (i) the individual income tax; and
 - (ii) the tax on profits of enterprises;
- (hereinafter referred to as “Ukraine tax”);”.

ARTICLE 4

1. Subparagraph a) of Paragraph 1 of Article 3 “General definitions” of the Convention shall be deleted and replaced by the following:

“a) the term “United Kingdom” means Great Britain and Northern Ireland but, when used in a geographical sense, means the territory and territorial sea of Great Britain and Northern Ireland and the areas beyond that territorial sea over which Great Britain and Northern Ireland exercise sovereign rights or jurisdiction in accordance with their domestic law and international law;”.

2. Subparagraph b) of Paragraph 1 of Article 3 “General definitions” of the Convention shall be deleted and replaced by the following:

“b) the term “Ukraine” when used in geographical sense, means the territory of Ukraine, its Continental Shelf and its exclusive (maritime) economic zone, including any area outside the territorial sea of Ukraine which in accordance with international law has been or may hereafter be designated, as an area within which the rights of Ukraine with respect to the sea bed and sub-soil and their natural resources may be exercised;”.

3. Subparagraph e) of Paragraph 1 of Article 3 “General definitions” of the Convention shall be deleted and replaced by the following:

“e) the term person includes an individual, a company and any other body of persons;”.

4. Subparagraph i) of paragraph 1 of Article 3 “General definitions” of the Convention shall be deleted and replaced by the following:

“i) the term “competent authority” means in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative, and, in the case of Ukraine, the Ministry of Finance of Ukraine or its authorised representative.”.

5. The following new subparagraph (j) is inserted in Paragraph 1 of Article 3 “General Definitions” of the Convention:

“j) the term “pension scheme” means any scheme or other arrangement which:

- (i) is generally exempt from income taxation; and
- (ii) operates to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.”.

6. Paragraph 2 of Article 3 “General Definitions” of the Convention shall be deleted.

7. Paragraph 3 of Article 3 “General definitions” of the Convention shall be deleted and replaced by the following new paragraph 2:

“2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.”.

ARTICLE 5

Article 4 “Residence” of the Convention shall be deleted and replaced by the following:

“Article 4

Resident

“1. For the purposes of this Convention, the term “resident of a Contracting State” means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

2. The term “resident of a Contracting State” includes

- a) a pension scheme established in that State; and
- b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
 - b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;
 - c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;
 - d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.
4. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which that person shall be deemed to be a resident for the purposes of this Convention, having regard to its place of effective management, the place where it is incorporated or otherwise constituted and any other relevant factors. In the absence of a mutual agreement by the competent authorities of the Contracting States, the person shall not be considered a resident of either Contracting State for the purposes of claiming any benefits provided by the Convention, except those provided by Articles 22, 25 and 26.”.

ARTICLE 6

Paragraph 2 of Article 10 “Dividends” of the Convention shall be deleted and replaced by the following:

- “2. However, dividends paid by a company which is a resident of a Contracting State:
- a) may also be taxed in that State and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:
 - (i) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which holds directly or indirectly at least 20 per cent of the capital of the company paying the dividends;
 - (ii) 15 per cent of the gross amount of the dividends in all other cases;
 - b) shall, notwithstanding the provisions of sub-paragraph a), be exempt from tax in that State if the beneficial owner of the dividends is a pension scheme.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.”.

ARTICLE 7

1. Paragraph 1 of Article 11 “Interest” of the Convention shall be deleted and replaced by the following:

“1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.”

2. The following new paragraph 2 shall be added to Article 11 “Interest” of the Convention:

“2. However, interest arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the interest is a resident of the other Contracting State, the tax so charged shall not exceed 5 per cent of the gross amount of the interest.”.

3. The following new paragraph 3 shall be added to Article 11 “Interest” of the Convention:

“3. Notwithstanding the provisions of paragraph 2, interest referred to in paragraph 1 shall be taxable only in the Contracting State of which the beneficial owner is a resident where:

- a) the beneficial owner is that State, a political subdivision or local authority thereof or the central bank;
- b) the interest is paid by the state in which the interest arises, or by a political subdivision or local authority thereof; or
- c) the interest is paid in respect of a loan, debt claim or credit that is owed to, made, provided, guaranteed or insured by that State or a political subdivision, local authority or export financing agency thereof.”.

4. In paragraph 3 of Article 11 “Interest” of the Convention the words “The provisions of paragraph 1” shall be replaced by the following words “The provisions of paragraphs 1 and 2”.

5. Paragraph 7 of Article 11 “Interest” of the Convention shall be deleted.

6. Paragraphs 2, 3, 4, 5 and 6 of Article 11 “Interest” of the Convention shall be renumbered as paragraphs 4, 5, 6, 7 and 8 respectively.

ARTICLE 8

1. Paragraph 1 of Article 12 “Royalties” of the Convention shall be deleted and replaced by the following:

“1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.”.

2. The following new paragraph 2 shall be added to Article 12 “Royalties” of the Convention:

“2. However, royalties arising in a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State the tax so charged shall not exceed 5 per cent of the gross amount of the royalties.”

3. Paragraph 2 of Article 12 “Royalties” of the Convention shall be renumbered as paragraph 3.

4. Paragraph 3 of Article 12 “Royalties” of the Convention shall be renumbered as paragraph 4 and the words “The provisions of paragraph 1” shall be deleted and replaced by the words “The provisions of paragraphs 1 and 2”.

5. Paragraph 5 of Article 12 “Royalties” of the Convention shall be deleted and replaced by the following:

“5. Royalties shall be deemed to arise in a Contracting State when the payer is that State itself, a political subdivision, a local authority or a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the State in which the permanent establishment or fixed base is situated.”.

6. Paragraph 4 of Article 12 “Royalties” of the Convention shall be renumbered as paragraph 6.

ARTICLE 9

Article 23 “Limitation of relief” of the Convention shall be deleted and replaced by the following:

“Article 23

Entitlement to benefits

1. Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or a capital gain 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.

2. Where a benefit under this Convention is denied to a person under paragraph 1, the competent authority of the Contracting State that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income or a capital gain, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Contracting State to which the request has been made will consult with the competent authority of the other State before rejecting a request made under this paragraph by a resident of that other State.

3. Where under any provision of this Convention any income is relieved from tax in a Contracting State and, under the law in force in the other Contracting State a person, in respect of that income, is subject to tax by reference to the amount thereof which is remitted to or received in that other Contracting State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned Contracting State shall apply only to so much of the income as is taxed in the other Contracting State.

ARTICLE 10

Article 24 “Partnerships” of the Convention shall be deleted.

ARTICLE 11

1. Paragraph 1 of Article 26 “Mutual agreement procedure” of the Convention shall be deleted and replaced by the following:

“1. 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. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.”.

2. The following second sentence shall be added at the end of paragraph 2 of Article 26 “Mutual agreement procedure” of the Convention:
“Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.”.

3. The following second sentence shall be added at the end of paragraph 3 of Article 26 “Mutual agreement procedure” of the Convention:
“They may also consult together for the elimination of double taxation in cases not provided for in the Convention.”.

4. The following new paragraph 5 shall be added to Article 26 “Mutual agreement procedure” of the Convention:

“5. Where,

- a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
- b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.”.

ARTICLE 12

Article 27 “Exchange of information” of the Convention shall be deleted and replaced by the following:

“Article 27

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;
- 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.

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 13

Paragraph 3 of Article 29 “Entry into force” of the Convention shall be deleted.

ARTICLE 14

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

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

(a) in Ukraine:

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

(b) 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 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.

3. Notwithstanding the provisions of paragraphs 1 and 2, the amendments made by Article 11 and Article 12 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 this 9th day of October 2017 in the English and Ukrainian languages, both being equally authentic

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

Sir Alan Duncan

Oleksandr Danyliuk

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to the Order contains a Protocol (“the amending Protocol”) which amends a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Ukraine (“the Convention”). The Convention was scheduled to the Double Taxation Relief (Taxes on Income) (Ukraine) Order 1993 ([S.I. 1993/1803](#)). 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.

The amending Protocol amends the preamble to the Convention and the Articles of the Convention relating to persons covered, taxes covered, general definitions, residence, dividends, interest, royalties, mutual agreement procedure and exchange of information. The Article of the Convention relating to limitation of relief is replaced by an Article on entitlement to benefits. The Article of the Convention relating to partnerships is deleted.

Article 1 provides for citation.

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

The amending Protocol will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures.

The amending Protocol will take effect as follows:

- (a) in respect of the amendments made to Article 26 (Mutual agreement procedure) and Article 27 (Exchange of information) of the Convention by Articles 11 and 12 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 year next following the date on which the amending Protocol enters into force,
- (c) in Ukraine, in respect of other taxes, for fiscal years beginning on or after the first day of January of the 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 tax agreement. Double taxation agreements impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.