
STATUTORY INSTRUMENTS

1978 No. 1408

INCOME TAX

**The Double Taxation Relief (Taxes
On Income) (Switzerland) Order 1978**

Laid before the House of Commons in draft

Made - - - - 29th September 1978

At the Court at Balmoral, the 29th day of September 1978

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 497(8) of the Income and Corporation Taxes Act 1970, and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 497 of the said Income and Corporation Taxes Act 1970, section 98(2) of the Finance Act 1972 and section 39 of the Finance Act 1965, as amended, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1978.
2. It is hereby declared—
 - (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Swiss Federal Council with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of Switzerland; and
 - (b) that it is expedient that these arrangements should have effect.

N. E. Leigh
Clerk of the Privy Council

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SCHEDULE

“CONVENTION BETWEEN THE GOVERNMENT OF 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

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;

Have agreed as follows:

Personal scope

ARTICLE 1. This Convention shall apply to persons who are residents of one or both of the Contracting States.

Taxes covered

ARTICLE 2.—(1) The taxes which are the subject of this Convention are:

- (a) in the United Kingdom of Great Britain and Northern Ireland: the income tax, the corporation tax, the capital gains tax, the development land tax and the petroleum revenue tax (hereinafter referred to as “United Kingdom tax”);
- (b) in Switzerland: the federal, cantonal and communal taxes on income (total income, earned income, income from capital, industrial and commercial profits, capital gains and other items of income) (hereinafter referred to as “Swiss tax”).

(2) The Convention shall also apply to any identical or substantially similar taxes which are imposed by a Contracting State or a political sub-division or a local authority thereof after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

(3) The Convention shall not apply to the federal anticipatory tax withheld in Switzerland at source on prizes in a lottery.

General definitions

ARTICLE 3.—(1) In this Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom which in accordance with international law has been or may hereafter be designated, under the laws of the United Kingdom concerning the Continental Shelf, as an area within which the rights of the United Kingdom with respect to the sea-bed and sub-soil and their natural resources may be exercised;
- (b) the term “Switzerland” means the Swiss Confederation;
- (c) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Switzerland, as the context requires;
- (d) the term “tax” means United Kingdom tax or Swiss tax, as the context requires;
- (e) the term “person” includes any individual, company, unincorporated body of persons, and any other entity with or without juridical personality;

- (f) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (g) the terms “enterprise of a Contracting State” and “enterprise of the other Contracting State” mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;
- (h) the term “national” means :
 - (i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in either case he has the right of abode in the United Kingdom, and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;
 - (ii) in relation to Switzerland, any Swiss citizen and any legal person, partnership, association or other entity deriving its status as such from the law in force in Switzerland;
- (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;
- (j) the term “competent authority” means in the United Kingdom, the Commissioners of Inland Revenue or their authorised representative and in Switzerland, the Director of the Federal Tax Administration or his authorised representative;
- (k) the term “political subdivision”, in relation to the United Kingdom, includes Northern Ireland.

(2) As regards the application of the Convention by a Contracting State any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes which are the subject of the Convention.

Residence

ARTICLE 4.—(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 or any other criterion of a similar nature. But this term does not include any person who is liable to tax in that State in respect only of income from sources in that State. In the case of Switzerland, the term includes a partnership created or organised under Swiss law.

(2) 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 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 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 has not a permanent home available to him in either State, he shall be deemed to be a resident 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 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.

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(3) Where by reason of the provisions of paragraph (1) a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated.

Permanent establishment

ARTICLE 5.—(1) For the purposes of this Convention, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(2) The term “permanent establishment” includes especially:

- (a) a place of management,
- (b) a branch,
- (c) an office,
- (d) a factory,
- (e) a workshop and
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

(3) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(4) Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs (1) and (2), where a person—other than an agent of an independent status to whom paragraph (6) applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such a person are limited to those mentioned in paragraph (4) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

(6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Income from immovable property

ARTICLE 6.—(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs (1) and (3) shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Business profits

ARTICLE 7.—(1) The 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 of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

(2) Subject to the provisions of paragraph (3), where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributable to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

(3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

(4) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(5) Where profits include items of income which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

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Shipping, inland waterways transport and air transport

ARTICLE 8.—(1) Profits from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(2) Profits from the operation of boats engaged in inland waterways transport shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(3) If the place of effective management of a shipping enterprise or of an inland waterways transport enterprise is aboard a ship or boat, then it shall be deemed to be situated in the Contracting State in which the home harbour of the ship or boat is situated, or, if there is no such home harbour, in the Contracting State of which the operator of the ship or boat is a resident.

(4) The provisions of paragraph (1) shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Associated enterprises

ARTICLE 9.—(1) Where

- (a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any income, deductions, receipts or outgoings which would, but for those conditions, have been attributed to one of the enterprises, but, by reason of those conditions, have not been so attributed, may be included in the profits or losses of that enterprise and taxed accordingly.

(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 items so included comprise income, deductions, receipts or outgoings which would have been attributed 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 the competent authorities of the Contracting States may consult together with a view to reaching an agreement on the adjustment of profits or losses in both Contracting States.

Dividends

ARTICLE 10.—(1) Dividends derived from a company which is a resident of Switzerland by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Switzerland, and according to the laws of Switzerland, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;
- (b) 15 per cent of the gross amount of the dividends in all other cases.

(2) Dividends derived from a company which is a resident of the United Kingdom by a resident of Switzerland may be taxed in Switzerland. Such dividends may also be taxed in the United Kingdom, and according to the laws of the United Kingdom, but provided that the beneficial owner of the dividends is a resident of Switzerland the tax so charged shall not exceed:

- (a) 5 per cent of the gross amount of the dividends if the beneficial owner is a company which controls directly or indirectly at least 25 per cent of the voting power in the company paying the dividends;
 - (b) 15 per cent of the gross amount of the dividends in all other cases.
- (3) However, as long as an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom, the following provisions of this paragraph shall apply instead of the provisions of paragraph (2):
- (a)
 - (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Switzerland may be taxed in Switzerland.
 - (ii) Where a resident of Switzerland is entitled to a tax credit in respect of such a dividend under sub-paragraph (b) of this paragraph tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 15 per cent.
 - (iii) Where a resident of Switzerland is entitled to a tax credit in respect of such a dividend under sub-paragraph (c) of this paragraph tax may also be charged in the United Kingdom, and according to the laws of the United Kingdom, on the aggregate of the amount or value of that dividend and the amount of that tax credit at a rate not exceeding 5 per cent.
 - (iv) Except as provided in sub-paragraphs (a) (ii) and (a) (iii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom by a resident of Switzerland who is the beneficial owner of those dividends shall be exempt from any tax which is chargeable in the United Kingdom on dividends.
 - (b) A resident of Switzerland who receives a dividend from a company which is a resident of the United Kingdom shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividend, be entitled to the tax credit in respect thereof to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of that tax credit over his liability to United Kingdom tax.
 - (c) The provisions of sub-paragraph (b) of this paragraph shall not apply where the beneficial owner of the dividend is a company which either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend. In these circumstances a company which is a resident of Switzerland and receives a dividend from a company which is a resident of the United Kingdom shall, provided it is the beneficial owner of the dividend, be entitled to a tax credit equal to one half of the tax credit to which an individual resident in the United Kingdom would have been entitled had he received that dividend, and to the payment of any excess of that tax credit over its liability to United Kingdom tax. For the purpose of this sub-paragraph two companies shall be deemed to be associated if one is controlled directly or indirectly by a third company; and a company shall be deemed to be controlled by another company if the latter controls more than 50 per cent of the voting power in the first-mentioned company.
- (4) The term “dividends” as used in this Article means income from shares, jouissance shares or jouissance rights, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights assimilated to income from shares by the taxation laws of the State of which the company making the distribution is a resident and, in the case of the United Kingdom, includes any item which under the laws of the United Kingdom is treated as a distribution of a company.

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(5) The provisions of paragraphs (1), (2) and (3) shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(6) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment or a fixed base situated in that other State, nor subject the company's undistributed profits to a tax on the company's undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

Interest

ARTICLE 11.—(1) Interest derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage, and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures.

(3) The provisions of paragraph (1) shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the debt-claims in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(4) Where, by reason of a special relationship between the payer and the beneficial owner, or between both of them and some other person, the amount of the interest paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments, if treated as a dividend or distribution of a company, shall be taxed in accordance with Article 10.

(5) Interest exempted from tax under the provisions of this Article shall not be treated as a distribution of a company paying such interest by reason of any provisions in the law of either Contracting State which relate only to interest paid to a non-resident, with or without any further requirement, or which relate only to interest payments between interconnected companies, with or without any further requirements.

(6) The provisions of paragraph (5) of this Article shall not apply to interest paid to a company which is a resident of a Contracting State where:

- (a) the same persons participate directly or indirectly in the management or control of the company paying the interest and the company receiving the interest, and
- (b) more than 50 per cent of the voting power in the company receiving the interest is controlled, directly or indirectly, by a person or persons resident in the other Contracting State.

Royalties

ARTICLE 12.—(1) Royalties derived and beneficially owned by a resident of a Contracting State shall be taxable only in that State.

(2) The term “royalties” as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use, industrial, commercial, or scientific equipment, or for information concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph (1) shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In that case the provisions of Article 7 or Article 14, as the case may be, shall apply.

(4) Where, by reason of a special relationship between the payer and the beneficial owner, or between both of them and some other person, the amount of the royalties paid exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In that case, the excess part of the payments, if treated as a dividend or distribution of a company, shall be taxed in accordance with Article 10.

Capital gains

ARTICLE 13.—(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(3) Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.

(4) Gains from the alienation of shares of a company, the property of which consists principally of immovable property situated in a Contracting State, may be taxed in that State.

(5) Gains from the alienation of any property other than that referred to in paragraphs (1), (2), (3) and (4) shall be taxable only in the Contracting State of which the alienator is a resident.

Independent personal services

ARTICLE 14.—(1) Income derived by a resident of a Contracting State in respect of professional services or other activities of an independent character shall be taxable only in that State unless he has a fixed base regularly available to him in the other Contracting State for the purpose of performing his activities. If he has such a fixed base, the income may be taxed in the other State but only so much of it as is attributable to that fixed base.

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(2) The term “professional services” includes, especially, independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, lawyers, engineers, architects, dentists and accountants.

Dependent personal services

ARTICLE 15.—(1) Subject to the provisions of Articles 16, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

(2) Notwithstanding the provisions of paragraph (1), remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- (a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned, and
- (b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State, and
- (c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, or aboard a boat engaged in inland waterways transport, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Directors' fees

ARTICLE 16. Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Artistes and athletes

ARTICLE 17.—(1) Notwithstanding the provisions of Articles 14 and 15, income derived by a resident of a Contracting State as an entertainer, such as theatre, motion picture, radio or television artiste, or a musician, or as an athlete, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or an athlete in his capacity as such accrues not to the entertainer or athlete himself but to another person, that income may, notwithstanding the provisions of Articles 7, 14 and 15, be taxed in the Contracting State in which the activities of the entertainer or athlete are exercised.

(3) The provisions of paragraphs (1) and (2) shall not apply to remuneration or profits, salaries, wages and similar income derived from activities performed in a Contracting State by entertainers if the visit to that State is substantially supported by public funds of the other Contracting State or a political sub-division or a local authority thereof.

Pensions and annuities

ARTICLE 18.—(1) Subject to the provisions of paragraph (2) of Article 19, any pension and other similar remuneration in consideration of past employment and any annuity paid to a resident of a Contracting State shall be taxable only in that State.

(2) The term “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 return for adequate and full consideration in money or money's worth.

Government service

(a) **ARTICLE 19.** (1) (a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such 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:

(i) is a national of that State; or

(ii) did not become a resident of that State solely for the purpose of rendering the services.

(a) (2) (a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a local authority thereof to an individual in respect of services rendered to that State or subdivision or authority shall be taxable only in that State.

(b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.

(3) The provisions of Articles 15, 16 and 18 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a local authority thereof.

Students

ARTICLE 20. Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first-mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

Other income

ARTICLE 21.—(1) Items of income of a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention, other than income paid out of trusts, shall be taxable only in that State.

(2) The provisions of paragraph (1) shall not apply to income other than income from immovable property as defined in paragraph (2) of Article 6, if the recipient of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment or fixed base. In that case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

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Elimination of double taxation

ARTICLE 22.—(1) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom (which shall not affect the general principle hereof):

- (a) Swiss tax payable under the laws of Switzerland and in accordance with the provisions of this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Switzerland (excluding, in the case of a dividend, tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Swiss tax is computed;
- (b) in the case of a dividend paid by a company which is a resident of Switzerland to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the Swiss company, the credit shall take into account (in addition to any Swiss tax creditable under sub-paragraph (a)) the Swiss tax payable by the Company in respect of the profits out of which such dividend is paid.

(2) Where a resident of Switzerland derives income which, under the laws of the United Kingdom and in accordance with the provisions of the Convention may be taxed in the United Kingdom, Switzerland shall, subject to the provisions of paragraphs (3), (4) and (6), exempt such income from Swiss tax, provided, however, that such exemption shall apply to gains referred to in paragraph (4) of Article 13 only if taxation of such gains in the United Kingdom is demonstrated.

(3) Where a resident of Switzerland derives dividends which, in accordance with the provisions of paragraph (2) or (3) of Article 10, may be taxed in the United Kingdom, Switzerland shall allow, upon request, a relief to that person. The relief may consist of:

- (a) a deduction from the Swiss tax on the income of that person of an amount equal to the tax levied in the United Kingdom in accordance with the provisions of paragraph (2) or (3) of Article 10; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is attributable to the dividends, or
- (b) a lump sum reduction of the Swiss tax determined by standardised formulae which have regard to the general principles of the relief referred to in sub-paragraph (a), or
- (c) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in the United Kingdom from the gross amount of the dividends.

Switzerland shall determine the relief applicable and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.

(4) A company which is a resident of Switzerland and which derives dividends from a company which is a resident of the United Kingdom shall be entitled, for the purposes of Swiss tax with respect to such dividends, to the same relief which would be granted to the company if the company paying the dividends were a resident of Switzerland.

(5) For the purposes of the preceding paragraphs, profits, income and capital gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with the provisions of the Convention shall be deemed to arise from sources in that other State.

(6) Where any income is exempted from tax by any provision of the Convention, it may nevertheless be taken into account in computing the tax on other income or in determining the rate of such tax.

Non-discrimination

ARTICLE 23.—(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to individuals not resident in that State any of the personal allowances and reliefs which are granted to individuals so resident.

(4) Except where the provisions of paragraph (1) of Article 9, paragraph (4) of Article 11, or paragraph (4) of Article 12 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.

(5) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(6) The provisions of this Article shall apply to taxes of every kind and description.

Mutual agreement procedure

ARTICLE 24.—(1) Where a person considers that the actions of one or both of the Contracting State 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 State, present his case to the competent authority of the Contracting State of which he is a resident.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the Convention.

(3) The competent authorities of the Contracting State shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together to consider measures to counteract improper use of the provisions of the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

Exchange of information

ARTICLE 25.—(1) The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Convention in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of the Convention. No information

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as aforesaid shall be exchanged which would disclose any trade, business, banking, industrial or professional secret or trade process.

(2) In no case shall the provisions of this Article be construed as imposing upon either Contracting State the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State of which would be contrary to its sovereignty, security or public policy (order public) or to supply particulars which are not procurable under its own laws or those of the State making the application.

Diplomatic agents and consular officers

ARTICLE 26.—(1) Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

(2) Notwithstanding the provisions of Article 4 an individual who is a member of a diplomatic mission, consular post or permanent mission of a Contracting State which is situated in the other Contracting State or in a third State may be deemed for the purpose of the Convention to be a resident of the sending State if:

- (a) in accordance with international law he is not liable to tax in the receiving State in respect of income from sources outside that State, and
- (b) he is liable in the sending State to the same obligations in relation to tax on his total income as are residents of that State.

(3) The Convention shall not apply to international organisations, to organs or officials thereof and to persons who are members of a diplomatic mission, consular post or permanent mission of a third State, being present in a Contracting State and not treated in either Contracting State as residents in respect of taxes on income.

Miscellaneous rules

ARTICLE 27.—(1) Where under any provision of this Convention income from a source within Switzerland is relieved from Swiss tax and, under the laws in force in the United Kingdom, an individual, in respect of such income, is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under the Convention in Switzerland shall apply only to so much of the income as is remitted to or received in the United Kingdom.

(2) Where under any provision of the Convention a partnership is entitled, as a resident of Switzerland, to exemption from the United Kingdom tax on any income, such provision shall not be construed as restricting the right of the United Kingdom to charge any member of the partnership which is a resident of the United Kingdom to tax on its share of the income of the partnership; but any such income shall be deemed for the purposes of Article 22 to be income from sources within Switzerland.

(3) Where under any provision of the Convention an estate of a deceased person is entitled, as a resident of Switzerland, to exemption from United Kingdom tax on any income, such provision shall not be construed as requiring the United Kingdom to grant exemption from United Kingdom tax in respect of such part of such income as passes to any heir of such estate who is not a resident of Switzerland and whose share of such income is not subject to Swiss tax either in his hands or in the hands of the estate.

(4) Subject to the provisions of paragraph (6), individuals who are residents of Switzerland shall be entitled to the same personal allowances, reliefs and reductions for the purposes of United Kingdom taxation as British subjects not resident in the United Kingdom.

(5) Subject to the provisions of paragraph (6), individuals who are residents of the United Kingdom shall be entitled to the same personal allowances, reliefs and reductions for the purposes of Swiss tax as Swiss nationals resident in the United Kingdom.

(6) Nothing in the Convention shall entitle an individual who is a resident of a Contracting State and whose income from the other Contracting State consists solely of dividends, interest or royalties (or solely of any combination thereof) to the personal allowances, reliefs and reductions of the kind referred to in paragraphs (4) and (5) for the purposes of taxation in that other State.

(7) Where it is provided in the Convention that relief from tax in respect of any kind of income shall be allowed in the Contracting State from which such income is derived, that provision shall not be construed as requiring that income to be paid without deduction of tax at source at the full rate. Where tax has been deducted at source from such income the taxation authorities of the State in which relief from tax is required to be given shall, when the beneficial owner of the income shows to their satisfaction and within the time limits prescribed in that State that he is entitled to the relief, arrange for the appropriate repayment of tax.

(8) For the purpose of determining what reliefs or tax credit may be due under Article 10, or paragraphs (4) and (5) of this Article, the income of a partnership shall be regarded as that of its individual members.

(9) Where members of an approved investment fund of a Contracting State are entitled to relief from tax or to the tax credit in the other Contracting State under Article 10 or Article 11 as being the beneficial owners of the dividends or interest derived by the fund, the relief or the tax credit may be claimed on behalf of the members by the managers of the fund. The admission of any such claim in whole or in part by the competent authority of that other State may be made subject to such conditions as that authority thinks proper to impose, after having consulted the competent authority of the first-mentioned State and shall be without prejudice to the right of the competent authority of the other State to recover from a member of the fund any repayment of tax or any payment in respect of the tax credit to which he was not entitled under Article 10 or Article 11. For the purposes of this paragraph an approved investment fund of the United Kingdom means a unit trust authorised under Section 17 of the Prevention of Fraud (Investments) Act 1958 or under Section 16 of the Prevention of Fraud (Investments) Act (Northern Ireland) 1940, and an approved investment fund of Switzerland means an investment fund as defined in Article 2 of the Federal Law for Investment Funds (“loi fédérale sur les fonds de placement”) of 1 July 1966.

Entry into force

ARTICLE 28.—(1) This Convention shall be ratified and the instruments of ratification shall be exchanged at Berne as soon as possible.

(2) The Convention shall enter into force immediately after the expiration of thirty days following the date on which the instruments of ratification are exchanged⁽¹⁾ and shall thereupon have effect:

- (a) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April 1978;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 April 1978;
 - (iii) in respect of development land tax, for any realised development value accruing on or after 1 April 1978; and
 - (iv) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January 1978;

(1) Instruments of ratification were exchanged on 6 September 1978.

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(b) in Switzerland:

for any taxable year beginning on or after 1 January 1978.

(3) Notwithstanding the provisions of paragraph (2), the Convention shall have effect in respect of any dividend paid on or after 6 April 1975 to which paragraph (3) of Article 10 applies.

(4) Subject to the provisions of paragraph (5) 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 30 September 1954, as amended by the Protocol signed at London on 14 June 1966 and by the Supplementary Protocol signed at London on 2 August 1974, (hereinafter referred to as “the 1954 Convention”), shall terminate upon the entry into force of this Convention and thereupon cease to have effect in respect of taxes to which this Convention, in accordance with the provisions of paragraph (2), applies.

(5) Where any provision of the 1954 Convention would have afforded any greater relief from tax any such provision as aforesaid shall continue to have effect:

(a) in the United Kingdom, for any year of assessment or financial year; and

(b) in Switzerland, for any taxable year

beginning, in either case, before 1 January 1979.

(6) This Convention shall not affect any Agreement in force extending the 1954 Convention in accordance with Article XXI thereof.

(7) The Agreement of 17 October 1931 between the Government of the United Kingdom and the Swiss Federal Council for reciprocal exemption from taxation on profits or gains arising through an agency shall terminate upon the entry into force of this Convention.

Termination

ARTICLE 29.—(1) This Convention shall remain in force until denounced by a Contracting State. Either Contracting State may denounce the Convention, through diplomatic channels, by giving notice of termination at least six months before the end of any calendar year after the year 1983. In such event, the Convention shall cease to have effect:

(a) in the United Kingdom:

(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 notice is given;

(ii) in respect of corporation tax and development land tax, for any financial year beginning on or after 1 April in the calendar year next following that in which the notice is given;

(iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1 January in the calendar year next following that in which the notice is given;

(b) in Switzerland:

for any taxable year beginning on or after 1 January of the calendar year next following that in which such notice is given.

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

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at London this 8th day of December 1977 in the English and French languages, both texts being equally authoritative.

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

FRANK JUDD

For the Swiss Federal Council:

ERNESTO THALMANN

EXPLANATORY NOTE

The Convention with Switzerland scheduled to this Order replaces the Convention signed in London on 30 September 1954, as amended by the Protocol signed in London on 14 June 1966 and by the Supplementary Protocol signed in London on 2 August 1974. It provides that certain trading profits not arising through a permanent establishment, interest, royalties, pensions (other than Government pensions) and the earnings of temporary business visitors are (subject to certain conditions) to be taxed only in the country of the taxpayer's residence. Government salaries and pensions are normally to be taxed by the paying Government only. Payments made for the maintenance of visiting students are (subject to certain conditions) to be exempt in the country visited. Provision is made for income from immovable property to be taxed in the country in which the property is situated. Capital gains arising from the disposal of movable property are normally to be taxed only in the country of the taxpayer's residence unless they arise from the disposal of assets of a permanent establishment which the taxpayer has in the other country. Shipping and air transport profits are to be taxed only in the country in which the place of effective management is situated.

The Dividends Article provides rules which are to apply to the taxation of dividends as long as under United Kingdom law an individual resident in the United Kingdom is entitled to a tax credit in respect of dividends paid by a company resident in the United Kingdom.

Where a United Kingdom company pays a dividend to a Swiss company controlling 10 per cent or more of its voting power, the Swiss company receiving the dividends will be entitled to a tax credit equal to one half of the tax credit which would be payable to a United Kingdom resident individual less a sum of not more than 5 per cent of the aggregate amount of the dividend and the tax credit. Where the recipient is an individual resident in Switzerland or a Swiss company controlling less than 10 per cent of the voting power of the United Kingdom company the tax credit payable will be equal to the tax credit which would be payable to a United Kingdom resident less a sum not exceeding 15 per cent of the aggregate amount of the dividend and tax credit. The rate of Swiss withholding tax on dividends paid to a United Kingdom company controlling at least 25 per cent of the voting power of a Swiss paying company will be limited to a maximum of 5 per cent. In all other cases the Swiss withholding tax will be not more than 15 per cent.

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Where income continues to be taxable in both countries, relief from double taxation is to be given by the country of the taxpayer's residence. There are also provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country and for the exchange of information and for consultation between the taxation authorities of the two countries.

The Convention is, generally, to take effect in the United Kingdom for the year of assessment or financial year beginning in 1978 but the provisions for the payment of the half tax credit are to take effect for any dividend paid on or after 6 April 1975.