

STATUTORY INSTRUMENTS

1980 No. 1528

INCOME TAX

**The Double Taxation Relief (Taxes on Income)
(Canada) (No. 2) Order 1980***Laid before the House of Commons in draft*

Made - - - - 13th October 1980

At the Court at Buckingham Palace, the 13th day of October 1980

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(a), 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 Income and Corporation Taxes Act 1970, 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) (Canada) (No. 2) Order 1980.

2. It is hereby declared—

- (a) that 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) (Canada) Order 1980(b) have been made with the Government of Canada with a view to affording relief from double taxation in relation to income tax or corporation tax and taxes of a similar character imposed by the laws of Canada; and
- (b) that it is expedient that those arrangements should have effect.

N. E. Leigh,
Clerk of the Privy Council.

(a) 1970 c. 10; section 497 was amended by section 98(2) and section 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).
(b) S.I. 1980/709.

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA 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 8TH SEPTEMBER 1978.

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

Desiring to conclude a Protocol to amend the Convention between the Contracting Governments 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 8th September 1978 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

The following new paragraph shall be inserted immediately after paragraph 4 of Article 15 of the Convention:

"5. Where under the law of a Contracting State tax is required to be deducted and is so deducted from salaries, wages and other similar remuneration derived in respect of an employment exercised in that Contracting State, tax shall not be deducted therefrom on behalf of the other Contracting State."

ARTICLE II

Paragraph 1 of Article 17 of the Convention shall be deleted and replaced by the following:

"1. Pensions and annuities arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State. However, such pensions and annuities may also be taxed in the first-mentioned Contracting State, but of the total amount thereof paid in any year of assessment or taxation year to a resident of the other Contracting State that first-mentioned Contracting State shall exempt from tax ten thousand Canadian dollars (\$10,000) or five thousand pounds sterling (£5,000), whichever is the greater. For the purposes of this paragraph the term "pensions" does not include lump sum payments out of a pension plan."

ARTICLE III

Paragraphs 3 and 4 of Article 22 of the Convention shall be deleted and replaced by the following:

"3. Nothing in this Convention shall be construed as preventing a Contracting State from imposing on the earnings attributable to permanent establishments in that State of a company which is a resident of the other Contracting State, tax in addition to the tax which would be chargeable on the earnings of a company which is a resident of the first-mentioned State, provided that the rate of any additional tax so imposed shall not exceed 15 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years.

4. For the purpose of paragraph 3 of this Article, the term "earnings" means the profits attributable to permanent establishments in a Contracting State (including gains from the alienation of property forming part of the business property of such permanent establishments) in a year and previous years after deducting therefrom:

- (a) business losses attributable to such permanent establishments (including losses from the alienation of property forming part of the business property of such permanent establishments) in such year and previous years; and

- (b) all taxes, other than the additional tax referred to in paragraph 3 of this Article, imposed on such profits in that State; and
- (c) the profits reinvested in that State, provided that where that State is Canada, the amount of such deduction shall be determined in accordance with the existing provisions of the law of Canada regarding the computation of the allowance in respect of investment in property in Canada, and any subsequent modification of those provisions which shall not affect the general principle thereof; and
- (d) five hundred thousand Canadian dollars (\$500,000), or two hundred and fifty thousand pounds sterling (£250,000), whichever is the greater, less any amount deducted in that State under this sub-paragraph (d) by the company or a company associated therewith; for the purposes of this sub-paragraph (d) a company is associated with another company if one of them directly or indirectly has control of the other or both are directly or indirectly under the control of the same person, or if the two companies deal with each other not at arm's length."

ARTICLE IV

The following new Article shall be inserted immediately after Article 27 of the Convention:

"ARTICLE 27A

Miscellaneous Rules Applicable to Certain Offshore Activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.
2. A person who is a resident of a Contracting State and carries on activities in the other Contracting State in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in that other Contracting State shall, subject to paragraphs 3 and 4 of this Article, be deemed to be carrying on a business in that other Contracting State through a permanent establishment situated therein.
3. The provisions of paragraph 2 of this Article shall not apply where the activities referred to therein are carried on for a period or periods not exceeding in the aggregate 30 days in any 12 month period. For the purposes of this paragraph:
 - (a) where a person carrying on activities referred to in paragraph 2 of this Article is associated with an enterprise carrying on substantially similar activities, that person shall be deemed to be carrying on those substantially similar activities of the enterprise with which he is associated, in addition to his own activities;
 - (b) two enterprises shall be deemed to be associated if one enterprise participates directly or indirectly in the management or control of the other enterprise or if the same persons participate directly or indirectly in the management or control of both enterprises.
4. Profits derived by a resident of a Contracting State from the transportation of passengers or goods to a location where activities in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in a Contracting State, or from the operation of tugboats and similar vessels in connection with such activities, shall be taxable only in the Contracting State of which he is a resident.
5. (a) Subject to sub-paragraph (b) of this paragraph, salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other Contracting State may, to the extent that the duties are performed offshore in that other Contracting State, be taxed in that other Contracting State.

- (b) Salaries, wages and similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of passengers or goods to a location where activities connected with the exploration or exploitation of the sea bed and sub-soil and their natural resources are being carried on in the other Contracting State, or in respect of an employment exercised aboard a tugboat or similar vessel in connection with such activities, may be taxed in that other Contracting State unless the person deriving the profits from the operation of the ship or aircraft is a resident of the first-mentioned Contracting State."

ARTICLE V

The following new paragraph shall be inserted immediately after paragraph 7 of Article 28 of the Convention:

"8. Notwithstanding any provisions of the respective domestic laws of the Contracting States imposing time limits for applications for relief from tax, an application for relief under the provisions of this Convention shall have effect, and any consequential refunds of tax made, if the application is made to the competent authority concerned within one year of the end of the calendar year in which this Convention enters into force."

ARTICLE VI

1. Each of the Contracting States shall notify to the other the completion of the procedure required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall, subject to the provisions of paragraph 2 of this Article, thereupon have effect in accordance with Article 28 of the Convention.

2. The provisions of Article 27A of the Convention (as added by Article IV of the Protocol) shall have effect:

(a) in the United Kingdom, for any year of assessment, financial year or chargeable period beginning on or after 1 April in the calendar year next following that in which the Protocol enters into force;

(b) in Canada:

(i) in respect of tax withheld at the source on amounts paid or credited to non-residents on or after 1 January in the calendar year next following that in which the Protocol enters into force; and

(ii) in respect of other Canadian taxes for any taxation year beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

3. This Protocol shall cease to be effective at such a time as the Convention ceases to be effective in accordance with Article 29 of the Convention.

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

Done in duplicate at Ottawa this 15th day of April 1980, in the English and French languages, both texts being equally authoritative.

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

JOHN FORD

For the Government of
Canada:

MARK MACGUIGAN

EXPLANATORY NOTE
(This Note is not part of the Order.)

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) Order 1980.

It includes a provision to bar both States from deducting tax at source from the same remuneration. The right to continue to deduct tax is given to the State in which the employment is exercised.

The Protocol establishes that the first £5,000 (\$C10,000) of pension income is wholly exempt in the country of source, and excludes lump sum payments out of a pension plan from the scope of the provisions relating to pensions.

Amendments are made to the provisions concerning a supplemental tax on the branch profits of a permanent establishment to establish that the first £250,000 (\$C500,000) of those profits is wholly exempt from such tax.

The Protocol also introduces a new Article concerning the taxation of income from operations on the Continental Shelf. In general each country may tax the profits of residents of the other country which are derived from activity connected with the exploration or exploitation of the seabed and sub-soil of the first country and their natural resources. The provisions of this Article are to take effect in the United Kingdom for any year of assessment, financial year or chargeable period beginning on or after 1 April in the calendar year following that in which the Protocol enters into force. The other provisions of the Protocol are to take effect in accordance with the provisions of the above Convention.

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