
STATUTORY INSTRUMENTS

1980 No. 706

TAXES

**The Double Taxation Relief (Taxes On
Estates of Deceased Persons and Inheritances
and On Gifts) (Netherlands) Order 1980**

Laid before the House of Commons in draft

Made - - - - 21st May 1980

At the Court at Buckingham Palace, the 21st day of May 1980

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of the House of Commons.

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by paragraph 7 of Schedule 7 to the Finance Act 1975, 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 Estates of Deceased Persons and Inheritances and on Gifts) (Netherlands) Order 1980.

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 Government of the Kingdom of the Netherlands with a view to affording relief from double taxation in relation to capital transfer tax and taxes of a similar character imposed by the laws of the Kingdom of the Netherlands; and
- (b) 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 UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES OF DECEASED PERSONS AND INHERITANCES AND ON GIFTS

The United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands;
Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates of deceased persons and inheritances and on gifts;
Have agreed as follows:

Scope

ARTICLE 1. This Convention shall apply:

- (a) to estates of and gifts made by persons domiciled in one or both of the States at their death or at the time of the gift, as the case may be;
- (b) to property comprised in settlements made by persons domiciled in either State at the time when the settlement was made.

Taxes covered

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

- (a) in the United Kingdom, the capital transfer tax (hereinafter referred to as “United Kingdom tax”);
- (b) in the Netherlands, the succession duty (het recht van successie), the gift duty (het recht van schenking) and the transfer duty (het recht van overgang) (hereinafter referred to as “Netherlands tax”).

(2) This Convention shall apply also to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the States shall notify each other of any substantial changes which have been made in their respective taxation laws.

General definitions

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

- (a) the term “United Kingdom” means Great Britain and Northern Ireland;
- (b) the term “the Netherlands” means the part of the Kingdom of the Netherlands that is situated in Europe;
- (c) the term “State” means the United Kingdom or the Netherlands as the context requires and the term “States” means the United Kingdom and the Netherlands;
- (d) 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 had the right of abode in the United Kingdom at the time of the death or gift or any other material time;
 - (ii) in relation to the Netherlands, any individual possessing the Netherlands nationality;

- (e) the term “tax” means United Kingdom tax or Netherlands tax as the context requires;
- (f) the term “person” includes an individual, a company and any other body of persons;
- (g) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative and, in the case of the Netherlands, the Minister of Finance or his authorised representative;
- (h) the term “gift” means in the United Kingdom a transfer of value other than one made on death and the term “donor” shall be construed accordingly.

(2) As regards the application of the Convention by one of the States 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 to which the Convention applies.

Fiscal domicile

ARTICLE 4.—(1) For the purposes of this Convention, a person was domiciled:

- (a) in the United Kingdom, if he was domiciled in the United Kingdom in accordance with its law or is treated as so domiciled for the purposes of a tax which is the subject of this Convention;
- (b) in the Netherlands, if he was a resident of or is treated as a resident of the Netherlands for the purposes of a tax which is the subject of this Convention;

provided that a person shall not be deemed to be domiciled in one of the States if on the death or gift that State imposes tax only by reference to property situated in that State.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual was domiciled in both States, then, subject to the provisions of paragraph (3) of this Article, his status shall be determined as follows:

- (a) he shall be deemed to be domiciled in the State in which he had a permanent home available to him; if he had a permanent home available to him in both States, the domicile shall be deemed to be in the State with which his personal and economic relations were closer (centre of vital interests);
- (b) if the State in which he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in either State, the domicile shall be deemed to be in the State in which he had an habitual abode;
- (c) if he had an habitual abode in both States or in neither of them, the domicile shall be deemed to be in the State of which he was a national;
- (d) if he was a national of both States or of neither of them, the competent authorities of the States shall settle the question by mutual agreement.

(3) Notwithstanding the provisions of paragraph (2) of this Article, where by reason of the provisions of paragraph (1) of this Article an individual was at the time his domicile falls to be determined domiciled in both States and

- (a) was at that time a national of one of the States but not of the other, and
- (b) was resident in that other State but had been so resident for less than seven years out of the ten years immediately preceding that time, and
- (c) did not intend to remain indefinitely in that other State,

then he shall be deemed to be domiciled at that time in the State of which he was a national.

For the purposes of this paragraph where that other State is the United Kingdom the question whether a person was resident there shall be determined as for income tax purposes, but without regard to any dwelling-house available to him in the United Kingdom for his use and “years” shall be taken

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to mean income tax years of assessment ending with the year of assessment in which death or the making of a gift occurs.

Immovable property

ARTICLE 5.—(1) Immovable property may be taxed in the State in which such property is situated.

(2) The term “immovable property” shall have the meaning which it has under the law of the 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, an interest in the proceeds of sale of land which is held on trust for sale, 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, aircraft and debts secured by mortgage or otherwise shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to immovable property of an enterprise and to immovable property used for the performance of independent personal services.

Business property of a permanent establishment and assets pertaining to a fixed base used for the performance of independent personal services

ARTICLE 6.—(1) Except for assets referred to in Articles 5 and 7, assets forming part of the business property of a permanent establishment of an enterprise may be taxed in the State in which the permanent establishment is situated.

(2) 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.

(3) 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.

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

(5) 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) of this paragraph provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(6) Except for assets described in Article 5, assets pertaining to a fixed base used for the performance of independent personal services may be taxed in the State in which the fixed base is situated.

(7) The provisions of paragraphs (1) and (6) of this Article shall apply to an interest in a partnership if an enterprise is carried on, or independent professional services are performed, by the partnership.

Ships and aircraft

ARTICLE 7. Ships and aircraft operated in international traffic and boats engaged in inland water-ways transport, and movable property pertaining to the operation of such ships, aircraft and boats, may be taxed in the State in which the place of effective management of the enterprise is situated.

Other property

ARTICLE 8. Subject to the provisions of Article 11 property wherever situated and not dealt with in Articles 5, 6 and 7 shall be taxable only in the State in which the deceased or the donor was domiciled at the time of the death or gift.

Conflict as to the nature of property

ARTICLE 9. If, by the law of one of the States, any right or interest is regarded as property not falling within any of Articles 5, 6 and 7, but, by the law of the other State, that right or interest is regarded as property falling within those Articles, then that right or interest shall for the purposes of this Convention be regarded as property falling within those Articles.

Deductions

ARTICLE 10. In determining the amount on which tax is to be computed deductions shall be allowed in accordance with the law of the State in which the tax is imposed.

Subsidiary taxing rights

ARTICLE 11.—(1) If the deceased or the donor was domiciled in one of the States at the time of the death or gift and was at that time a national of the other State and had been domiciled in that other State at any time within the ten years immediately preceding the death or gift, that other State may impose tax according to its domestic law.

(2) The United Kingdom may impose tax by reference to property comprised in a settlement unless at the time when the settlement was made the settlor was:

- (a) domiciled in the Netherlands; and

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(b) not a national of the United Kingdom who had been domiciled in the United Kingdom at any time within the immediately preceding ten years.

(3) If under the provisions of Article 8 any property would be taxable only in the Netherlands and the deceased or donor is either a national of the United Kingdom and not a national of the Netherlands or is treated for the purposes of Netherlands tax as a resident of the Netherlands under its unilateral 10-year rule, the United Kingdom may also impose tax, according to its law, by reference to such property, if the competent authority of the Netherlands notifies the competent authority of the United Kingdom that the Netherlands tax chargeable with respect to such property has not been paid (otherwise than as a result of a specific exemption, deduction, credit or allowance).

Exemptions

ARTICLE 12.—(1) Where property other than community property passes from a deceased person who was domiciled in the Netherlands to his or her spouse, and that property may be taxed in the United Kingdom solely by reason of Article 5, 6 or 7, and the spouse was not domiciled in the United Kingdom but the transfer would have been wholly exempt if the spouse had been so domiciled, the United Kingdom shall exempt the property from tax to the extent of not less than 50 per cent of the value transferred, calculated as a value on which no tax is payable and after taking account of all exemptions except those for transfers between spouses.

(2) Where property other than community property passes from a deceased person who was domiciled in the United Kingdom to his or her spouse and that property may be taxed in the Netherlands solely by reason of Article 5, 6 or 7, the Netherlands shall exempt from tax such property to the extent that 50 per cent of its value exceeds the amount of the personal exemption which under the law of the Netherlands is given to a surviving spouse. If however the deceased person was a resident of the Netherlands under its domestic law the preceding sentence shall apply only to the extent that it is shown that the tax so computed is not less than the tax which would have been imposed if the deceased person had been domiciled in the Netherlands for the purposes of this Convention.

(3) Paragraph (2) shall not apply if at the time of death the United Kingdom under its domestic law taxes property passing from a deceased person to his or her spouse, who has the same domicile as that of the deceased person, to the extent of more than 50 per cent of its value.

Credit provisions

ARTICLE 13.—(1) Where one of the States imposes tax in connection with any event by reference to any property which the other State may tax in accordance with Article 5, 6 or 7, the former State shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of tax so attributable) equal to so much of the tax imposed in the other State in connection with the same event as is attributable to such property.

(2) Subject to paragraph (3) of this Article, where both States impose tax in connection with any event by reference to any property not being property referred to in Article 5, 6 or 7, the State which imposes tax by virtue of paragraph (1) of Article 11, shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the other State by virtue of Article 8 in connection with the same event as is attributable to such property.

(3) Where by virtue of paragraph (2) of Article 11 the United Kingdom imposes tax in connection with any event by reference to any property comprised in a settlement not being property referred to in Article 5, 6 or 7, the United Kingdom shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of the tax so attributable) equal to so much of the tax imposed in the Netherlands in connection with the same event as is attributable to such property.

- (4) For the purposes of this Article,
- (a) the tax attributable to any property imposed in one of the States is tax as reduced by the amount of any credit allowed by that State in respect of tax attributable to that property imposed in a territory other than one of the States;
 - (b) where tax is imposed on the death of a person by reason of a gift made within 3 years preceding the death, whether in consequence of the fact that the gift is deemed to be derived from his estate or otherwise with respect to that gift, that tax shall be treated as if it were imposed in connection with that gift;
 - (c) tax is imposed in one of the States if it is chargeable under the law of that State and duly paid.

Time limit

ARTICLE 14. Any claim for a credit or for a repayment of tax founded on the provisions of this Convention shall be made within six years from the date of the event giving rise to a liability to tax or, where later, within one year from the last date on which tax for which credit is given is due.

Non-discrimination

ARTICLE 15.—(1) The nationals of one of the States shall not be subjected in the other 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 one of the States has in the other 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) Enterprises of one of the States, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other 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 that first-mentioned State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident.

Mutual agreement procedure

ARTICLE 16.—(1) Where a person considers that the actions of one or both of the 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 laws of those States, present his case to the competent authority of either 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 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 State, with a view to the avoidance of taxation which is not in accordance with the provisions of the Convention.

(3) The competent authorities of the States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention.

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(4) The competent authorities of the 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 17.—(1) The competent authorities of the States shall exchange such information as is necessary for carrying out the provisions of this Convention or of the domestic laws of the States concerning taxes covered by the Convention insofar as the taxation thereunder is not contrary to the Convention. Any information received by one of the States 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) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by the Convention. 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.

(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on one of the States the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other 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 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 (*ordre public*).

Diplomatic agents and consular officials

ARTICLE 18. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officials under the general rules of international law or under the provisions of special agreements.

Territorial extension

ARTICLE 19.—(1) This Convention may be extended, either in its entirety or with any necessary modifications, to any territory for whose international relations the United Kingdom of Great Britain and Northern Ireland is responsible, as well as to the Netherlands Antilles, if the territory or country concerned imposes taxes substantially similar in character to those which are the subject of this Convention. Any such extension shall take effect from such date and subject to such modifications and conditions, including conditions as to termination, as may be specified and agreed in notes to be exchanged through the diplomatic channel.

(2) The termination of the Convention by one of the States shall, unless otherwise expressly agreed by both States, not terminate the application of the Convention to any territory or country to which it has been extended under this Article.

Entry into force

ARTICLE 20.—(1) Each of the Contracting Parties shall notify to the other the completion of the procedure required by its law for the bringing into force of this Convention.

(2) The Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect in respect of property by reference to which there is a charge to tax which arises after that date.

(3) Subject to the provisions of paragraph (4) of this Article, the Convention between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of the Netherlands for the Avoidance of Double Taxation with respect to Duties on the Estates of Deceased Persons signed at London on 15 October 1948 (hereinafter referred to as “the 1948 Convention”), shall cease to have effect in respect of property to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

(4) Where on a death before 27 March 1981 any provision of the 1948 Convention would have afforded any greater relief from tax than this Convention in respect of

- (a) any gift inter vivos made by the deceased before 27 March 1974, or
- (b) any settled property in which the deceased had a beneficial interest in possession before 27 March 1974 but not at any time thereafter,

that provision shall continue to have effect in the United Kingdom in relation to that gift or settled property.

(5) The 1948 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

Termination

ARTICLE 21.—(1) This Convention shall remain in force until terminated by one of the Contracting Parties. Either Contracting Party may terminate this Convention, through the diplomatic channel, at any time after 5 years from the date on which this Convention enters into force provided that at least 6 months' prior notice has been given. In such event the Convention shall cease to have effect at the end of the period specified in the notice but shall continue to apply in respect of the estate of any person dying before the end of that period and in respect of any event other than death occurring before the end of that period and giving rise to liability to tax under the laws of either State.

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

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

Done in duplicate at The Hague this 11th day of December 1979, in the English and Dutch languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

Jock Taylor

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For the Kingdom of the Netherlands:

C.A. Van Der Klaauw”

EXPLANATORY NOTE

The Double Taxation Convention with the Netherlands which forms the Schedule to this Order applies to death duties and gift taxes. The taxes covered by the Convention are the United Kingdom capital transfer tax and the Dutch succession, gift and transfer duties. The Convention will also apply to any tax of a substantially similar character which may be imposed by either country.

Under the Convention, the country in which the transferor was domiciled can tax property wherever it is situated. The other country can normally tax only specified categories of property, namely immovable property situated in its territory, business property of a permanent establishment or a fixed base in its territory and certain ships and aircraft. The other country may impose tax also if the transferor was a national of that country and had been domiciled within any part of its territory within the 10 years immediately preceding the transfer. There is a special rule for settled property.

Where both countries impose tax, the Convention provides rules for determining which country is to give credit for the other's tax. In general, the country in which the transferor was not domiciled is required to give credit. But the country in which the transferor was domiciled is required to give credit for the other country's tax on the categories of property listed in the previous paragraph.

Rules are provided for determining a person's domicile for the purposes of the Convention and a definition of nationality is also provided.

There are provisions for resolving conflicts as to the nature of property and for enabling the United Kingdom to impose tax due under its own law where tax is not paid in the Netherlands although it is chargeable there under the Convention.

There are provisions which extend the reliefs available in both countries for transfers between husband and wife.

There are also provisions for safeguarding nationals of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention applies to estates of and gifts made by persons domiciled in one or both countries at the time of the transfer and to property comprised in settlements made by persons domiciled in one or both countries at the time when the settlement was made.

The Convention has effect in the United Kingdom in respect of transfers giving rise to a tax charge on or after the Convention enters into force. The Convention will enter into force after each country has notified the other that its internal procedures for giving force of law to the Convention have been completed.