
STATUTORY INSTRUMENTS

1985 No. 1996

INCOME TAX

**The Double Taxation Relief (Taxes
On Income) (Canada) Order 1985**

Laid before the House of Commons in draft

Made - - - - 18th December 1985

At the Court at Buckingham Palace, the 18th day of December 1985

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⁽¹⁾, 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, 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) Order 1985.
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 have been made with the Government of Canada 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 Canada; and
 - (b) that it is expedient that those arrangements should have effect.

G. I. de Deney
Clerk of the Privy Council

⁽¹⁾ section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c. 41) and section 10 of the Capital Gains Tax Act 1979 (c. 14).

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In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.
Done in duplicate at London this 16th day of October 1985, in the English and French languages, both texts being equally authoritative.

Young
For the Government of Canada

Roy McMurtry
For the Government of the United Kingdom of
Great Britain and Northern Ireland

SCHEDULE 1

“PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA, FURTHER AMENDING THE CONVENTION 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 8 SEPTEMBER 1978 AND AMENDED BY A PROTOCOL SIGNED AT OTTAWA ON 15 APRIL 1980

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

Desiring to conclude a Protocol to amend further 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 8 September 1978 and amended by a Protocol signed at Ottawa on 15 April 1980, (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

Article 8 of the Convention shall be deleted and replaced by the following:

“ARTICLE 8

Shipping and Air Transport

1. Profits derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1 and Article 7, profits derived from the operation of ships used principally to transport passengers or goods exclusively between places in a Contracting State may be taxed in that State.
3. Notwithstanding the provisions of Article 7, profits of an enterprise of a Contracting State from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise in international traffic shall be taxable only in that State.
4. The provisions of this Article shall also apply to profits derived by an enterprise of a Contracting State from its participation in a pool, a joint business or an international operating agency.”

ARTICLE II

Article 10 of the Convention shall be deleted and replaced by the following:

“ARTICLE 10

Dividends

1. Dividends paid by a company which is a resident of Canada to a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Canada,

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and according to the laws of Canada, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed:

- (a) 10 per cent of the gross amount of the dividends if the recipient is a company which controls, directly or indirectly, at least 10 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 paid by a company which is a resident of the United Kingdom to a resident of Canada may be taxed in Canada. 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 Canada the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

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 of this Article:

- (a)
 - (i) Dividends paid by a company which is a resident of the United Kingdom to a resident of Canada may be taxed in Canada.
 - (ii) Where a resident of Canada 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 Canada 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 10 per cent.
 - (iv) Except as provided in sub-paragraphs (a)(ii) and (a)(iii) of this paragraph, dividends paid by a company which is a resident of the United Kingdom to a resident of Canada 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 Canada 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 such 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, or is associated with, 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 Canada 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 such 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 controls, directly or indirectly, more than 50 per cent of the voting power in the other company,

or a third company controls more than 50 per cent of the voting power in both of them.

4. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income assimilated to or treated in the same way as income from shares by the taxation law of the State of which the company making the payment is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply if the recipient 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 professional 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 such a case, the provisions of Article 7 or Article 14, as the case may be, shall apply.

6. Where a company is a resident of only one Contracting State, the other Contracting 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other State.

7. If a resident of Canada does not bear Canadian tax on dividends derived from a company which is a resident of the United Kingdom and owns 10 per cent or more of the class of shares in respect of which the dividends are paid, then neither paragraph 2 nor 3 shall apply to the dividends to the extent that they can have been paid only out of profits which the company paying the dividends earned or other income which it received in a period ending twelve months or more before the relevant date. For the purposes of this paragraph the term “relevant date” means the date on which the beneficial owner of the dividends became the owner of 10 per cent or more of the class of shares referred to above.

Provided that this paragraph shall not apply if the shares were acquired for bona fide commercial reasons and not primarily for the purpose of securing the benefit of this Article.”

ARTICLE III

Paragraph 2 of Article 11 of the Convention shall be deleted and replaced by the following:

“2. However, such interest may be taxed in the Contracting State in which it arises, and according to the law of that State; but if the recipient is the beneficial owner of the interest, the tax so charged shall not exceed 10 per cent of the gross amount of the interest.”

ARTICLE IV

Paragraphs 3 and 4 of Article 12 of the Convention shall be deleted and replaced by the following:

“3. Notwithstanding the provisions of paragraph 2 of this Article, copyright royalties and other like payments in respect of the production or reproduction of any literary, dramatic, musical or artistic work (but not including royalties in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting) arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

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4. 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, 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, and includes payments of any kind in respect of motion pictures and works on film, videotape or other means of reproduction for use in connection with television broadcasting.”

ARTICLE V

Article 13 of the Convention shall be deleted and replaced by the following:

“ARTICLE 13

Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property 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 professional services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

3. Gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic or movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.

4. Gains from the alienation of:

- (a) any right, licence or privilege to explore for, drill for, or take petroleum, natural gas or other related hydrocarbons situated in a Contracting State, or
- (b) any right to assets to be produced in a Contracting State by the activities referred to in sub-paragraph (a) above or to interests in or to the benefit of such assets situated in a Contracting State,

may be taxed in that State.

5. Gains from the alienation of:

- (a) shares, other than shares quoted on an approved stock exchange, deriving their value or the greater part of their value directly or indirectly from immovable property situated in a Contracting State or from any right referred to in paragraph 4 of this Article, or
- (b) an interest in a partnership or trust the assets of which consist principally of immovable property situated in a Contracting State, of rights referred to in paragraph 4 of this Article, or of shares referred to in sub-paragraph (a) above,

may be taxed in that State.

6. The provisions of paragraph 5 of this Article shall not apply:

- (a) in the case of shares, where immediately before the alienation of the shares, the alienator owned, or the alienator and any persons related to or connected with him owned, less than 10 per cent of each class of the share capital of the company; or

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- (b) in the case of an interest in a partnership or trust, where immediately before the alienation of the interest, the alienator was entitled to, or the alienator and any persons related to or connected with him were entitled to, an interest of less than 10 per cent of the income and capital of the partnership or trust.
7. For the purposes of paragraph 5 of this Article:
- (a) the term “an approved stock exchange” means a stock exchange prescribed for the purposes of the Canadian Income Tax Act or a recognised stock exchange within the meaning of the United Kingdom Corporation Tax Acts; and
 - (b) the term “immovable property” does not include any property (other than rental property) in which the business of the company, partnership or trust was carried on.
8. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2, 3, 4 and 5 of this Article shall be taxable only in the Contracting State of which the alienator is a resident.
9. The provisions of paragraph 8 of this Article shall not affect the right of a Contracting State to tax, according to its domestic law, gains derived by an individual who is a resident of the other Contracting State from the alienation of any property, if the alienator:
- (a) is a national of the first-mentioned Contracting State or was a resident of that State for 15 years or more prior to the alienation of the property, and
 - (b) was a resident of the first-mentioned Contracting State at any time during the five years immediately preceding such alienation.”

ARTICLE VI

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

“ARTICLE 17

Pensions and Annuities

1. Pensions arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.
2. 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 annuities may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the recipient is the beneficial owner of the annuities the tax so charged shall not exceed 10 per cent of the portion thereof that is subject to tax in that State.
3. For the purposes of this Convention, the term “pension” includes any payment under a superannuation, pension or retirement plan, Armed Forces retirement pay, war veterans pensions and allowances, and any payment under a sickness, accident or disability plan, as well as any payment made under the social security legislation in a Contracting State, but does not include any payment under a superannuation, pension or retirement plan in settlement of all future entitlements under such a plan or any payment under an income-averaging annuity contract.
4. For the purposes of this Convention, 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, but does not include a pension or any payment under a

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superannuation, pension or retirement plan in settlement of all future entitlements under such a plan or any payment under an income-averaging annuity contract.

5. Notwithstanding any other provision of this Convention, alimony and similar payments arising in a Contracting State and paid to a resident of the other Contracting State who is the beneficial owner thereof shall be taxable only in that other State.”

ARTICLE VII

The following new paragraph shall be inserted immediately after paragraph 2 of Article 20 of the Convention:

“3. For the purposes of this Article, a trust does not include an arrangement whereby the contributions made to the trust are deductible for the purposes of taxation in Canada.”

ARTICLE VIII

The following new paragraph shall be inserted immediately after paragraph 3 of Article 21 of the Convention:

“4. Where profits on which an enterprise of a Contracting State has been charged to tax in that State are also included in the profits of an enterprise of the other State and the profits so included are profits which would have accrued to that enterprise of the other State if the conditions made between the enterprises had been those which would have been made between independent enterprises dealing at arm's length, the amount included in the profits of both enterprises shall be treated for the purposes of this Article as income from a source in the other State of the enterprise of the first-mentioned State and relief shall be given accordingly under the provisions of paragraph 1 or paragraph 2 of this Article.”

ARTICLE IX

Paragraph 3 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 10 per cent of the amount of such earnings which have not been subjected to such additional tax in previous taxation years.”

ARTICLE X

Paragraph 4 of Article 27 of the Convention shall be deleted and replaced by the following:

“4. The aggregate of the amount or value of the dividend and the amount of the tax credit referred to in paragraph 3(b) or 3(c) of Article 10 of this Convention shall be treated as a dividend for Canadian income tax purposes.”

ARTICLE XI

Article 27A of the Convention shall be deleted and replaced by the following:

“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 paragraph 3 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. 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.”

ARTICLE XII

1. The Governments of the Contracting States shall notify one another of the completion of the procedures required by their laws 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 have effect:

- (a) for tax withheld at the source on income referred to in Articles 10, 11 and 12 of the Convention, as amended by this Protocol, with respect to amounts paid or credited on or after the first day of the second month next following the date on which this Protocol enters into force;
- (b) in relation to payments referred to in Article 17 of the Convention, as amended by this Protocol, with respect to amounts paid on or after 6 April next following the date on which this Protocol enters into force;
- (c) in relation to all other provisions of this Protocol:
 - (i) in the United Kingdom for any financial year, year of assessment or chargeable period beginning on or after 1 April in the calendar year next following that in which this Protocol enters into force;
 - (ii) in Canada for any taxation year beginning on or after 1 January in the calendar year next following that in which this Protocol enters into force.

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

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EXPLANATORY NOTE

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 as amended by the Protocol set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Canada) (No.2) Order 1980 (S.I. 1980/1528).

It contains a new provision in Article I which provides that profits from the use, maintenance or rental of containers will be taxed only in the country in which the operator is resident.

Two important changes are made in the new Article II on Dividends. First, a Canadian company which receives a dividend from a United Kingdom company in which it controls 10 per cent or more of the voting power, will be entitled to payment of one-half of the United Kingdom tax credit less tax at 10 per cent on the sum of the credit and the dividend. Second, the rate of Canadian tax on dividends paid by a Canadian company to a United Kingdom company which controls at least 10 per cent of the voting power of the paying company will be reduced to 10 per cent.

Other provisions include a reduction to 10 per cent in the rate of withholding tax on interest in both countries and a minor amendment in the royalties article to ensure, in effect, that copyright royalties on video tapes for home use are exempt in the source country.

Article V introduces provisions for the exclusion of business property and a de minimis limit in charging capital gains tax in respect of certain unquoted shares and certain interests in partnerships and trusts.

Under Article VI pensions are to be taxed only in the country of the taxpayer's residence. Annuities may be taxed in either country but the rate of tax in the country of source is not to exceed 10 per cent.

Article IX provides that the rate of the additional tax which may be charged on the profits of a permanent establishment (in excess of the first £250,000 or \$C500,000, whichever is the greater) which a company resident in one country has in the other is not to exceed 10 per cent.

Other changes are made to the Articles dealing with Estates and Trusts, Elimination of Double Taxation, Miscellaneous Rules, and Offshore Activities.

The Protocol enters into force on the date of the later of the notifications by each country of the completion of its procedures for bringing the Protocol into force. The provisions relating to dividends, interest and royalties are to take effect for amounts paid on or after the first day of the second month following that in which the Protocol enters into force; and the provisions relating to pensions and annuities are to take effect for amounts paid on or after 6 April following the date on which the Protocol enters into force. All other provisions 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.