
STATUTORY INSTRUMENTS

1991 No. 2878

INCOME TAX

**The Double Taxation Relief (Taxes
on Income) (Finland) Order 1991**

Made - - - - 19th December 1991

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988⁽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 788 of the said Act, 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) (Finland) Order 1991.
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) (Finland) Order 1970⁽²⁾, as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Finland) Order 1973⁽³⁾, by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Finland) Order 1980⁽⁴⁾ and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Finland) Order 1985⁽⁴⁾, have been made with the Government of the Republic of Finland 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 Finland; and
 - (b) that it is expedient that those arrangements should have effect.

(1) 1988 c. 1; section 788 is extended by section 10 of the Capital Gains Tax Act 1979 (c. 14).
(2) S.I.1970/153.
(3) S.I. 1973/1327.
(4) S.I. 1980/710.
(4) S.I. 1980/710.

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G. I. de Deney
Clerk of the Privy Council

SCHEDULE

PROTOCOL

BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF FINLAND TO AMEND THE CONVENTION FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL, SIGNED AT LONDON ON 17TH JULY 1969 AS AMENDED BY THE PROTOCOLS SIGNED AT LONDON ON 17TH MAY 1973, 16TH NOVEMBER 1979 AND 1ST OCTOBER 1985

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

Desiring to conclude a Protocol to amend the Convention between the Contracting Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and Capital, signed at London on 17th July 1969, as amended by the Protocols signed at London on 17th May 1973, 16th November 1979 and 1st October 1985 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

Sub-paragraph of paragraph (1) of Article 2 of the Convention shall be deleted and replaced by the following:

“(b) in Finland:

- (i) the state income and capital tax;
- (ii) the communal tax;
- (iii) the church tax; and
- (iv) the tax withheld at source from non-residents' income.”

ARTICLE II

Sub-paragraphs (c) and (g) of paragraph (1) of Article 3 of the Convention shall be deleted and replaced by the following:

“(c) the term “national” means:

- (i) in relation to the United Kingdom, any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided 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 Finland, any individual possessing the nationality of Finland and any legal person, partnership, association or other entity deriving its status as such from the law in force in Finland;”

- “(g) the term “person” comprises an individual, a company and any other body of persons, but does not include partnerships which are not treated as bodies corporate for tax purposes in either Contracting State;”

ARTICLE III

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

“Article 11

DIVIDENDS

(1) Dividends derived from a company which is a resident of Finland by a resident of the United Kingdom may be taxed in the United Kingdom. Such dividends may also be taxed in Finland, and according to the laws of Finland, but provided that the beneficial owner of the dividends is a resident of the United Kingdom the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

(2) However, as long as an individual resident in Finland is entitled to a tax credit in respect of dividends paid by a company resident in Finland, the following provisions of this paragraph shall apply instead of the provisions of paragraph (1) of this Article:

- (a)
 - (i) Dividends derived from a company which is a resident of Finland by a resident of the United Kingdom may be taxed in the United Kingdom.
 - (ii) Where a resident of the United Kingdom 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 Finland, and according to the laws of Finland, 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 the United Kingdom 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 Finland, and according to the laws of Finland, 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-paragraph (a)(ii) and (iii) of this paragraph, dividends derived from a company which is a resident of Finland by a resident of the United Kingdom who is the beneficial owner of those dividends shall be exempt from any tax which is chargeable in Finland on dividends.
- (b) A resident of the United Kingdom who receives a dividend from a company which is a resident of Finland shall, subject to the provisions of sub-paragraph (c) of this paragraph and provided he is the beneficial owner of the dividend, be entitled, where the dividend is received in the tax year 1990, to a tax credit in respect thereof equal to thirteen twenty-firsts of the tax credit to which an individual resident in Finland would have been entitled had he received that dividend, and where the dividend is received in the tax year 1991 and subsequent years to a tax credit in respect thereof equal to five eighths of the tax credit to which an individual resident in Finland would have been entitled had he received that dividend, and to the payment of any excess of that tax credit over his liability to Finnish 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 controls the company paying the dividend. In such a case, a company which is a resident of the United Kingdom and receives a dividend from a company which is a resident of Finland shall, provided it is the beneficial owner of

the dividend, be entitled, where the dividend is received in the tax year 1990, to a tax credit in respect thereof equal to thirteen forty-seconds of the tax credit to which an individual resident in Finland would have been entitled had he received that dividend, and where the dividend is received in the tax year 1991 and subsequent years to a tax credit in respect thereof equal to five sixteenths of the tax credit to which an individual resident in Finland would have been entitled had he received that dividend, and to the payment of any excess of that tax credit over its liability to Finnish tax.

(3) If at any time, either:

(a) the rate (expressed as a percentage) at which minimum tax is chargeable in Finland on an amount of the profits of a company resident in Finland, or

(b) the rate at which tax is chargeable in Finland on the profits of such a company for a tax year, differs from the rate applicable to the tax year 1990 by a total of more than five percentage points, the Contracting States shall consult together with a view to determining whether the references in sub-paragraph (b) of paragraph (2) of this Article to five eighths of the tax credit to which an individual resident in Finland would have been entitled, and in sub-paragraph (c) of that paragraph to five sixteenths of that tax credit, remain appropriate in the circumstances and, if they determine that those references are no longer appropriate, what should be substituted for them.

(4) Dividends derived from a company which is a resident of the United Kingdom by a resident of Finland may be taxed in Finland. 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 Finland the tax so charged shall not exceed 5 per cent of the gross amount of the dividends.

(5) 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 (4) of this Article:

(a) (i) Dividends derived from a company which is a resident of the United Kingdom by a resident of Finland may be taxed in Finland.

(ii) Where a resident of Finland 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 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 Finland 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 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-paragraph (a)(ii) and (iii) of this paragraph, dividends derived from a company which is a resident of the United Kingdom by a resident of Finland 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 Finland 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 controls the company paying the dividend. In such a case, a company which is a resident of Finland 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.

- (6) If at any time, either:
- (a) the rate (expressed as a percentage) at which advance corporation tax is chargeable in the United Kingdom on an amount of the profits of a company resident in the United Kingdom which is equal to the amount or value of distributions by such a company, or
 - (b) the rate of corporation tax chargeable in the United Kingdom on the profits of such a company for a financial year,

differs from the rate in force at 1st January 1990 by a total of more than five percentage points, the Contracting States shall consult together with a view to determining whether the references in sub-paragraph (b) of paragraph (5) of this Article to the tax credit to which an individual resident in the United Kingdom would have been entitled, and in sub-paragraph (c) of that paragraph to one half of that tax credit, remain appropriate in the circumstances and, if they determine that those references are no longer appropriate, what should be substituted for them.

(7) The term “dividends” as used in this Article means income from 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 law of the State of which the company making the distribution is a resident and also includes any other item (other than interest or royalties relieved from tax under the provisions of Article 12 or Article 13 of this Convention) which, under the law of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(8) The provisions of paragraphs (1) to (6) of this Article 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 such a case the provisions of Article 8 or Article 15, as the case may be, shall apply.

(9) If the beneficial owner of the dividends being a resident of a Contracting State owns 10 per cent or more of the class of shares in respect of which the dividends are paid and does not suffer tax thereon in that State then paragraphs (1) to (6) of this Article shall not 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 in question. Provided that this paragraph shall apply only if the shares were acquired primarily for the purpose of securing the benefit of this Article and not for bona fide commercial reasons.

(10) 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.

(11) For the purposes of this Article, a company shall be deemed to control another company where it either alone or together with one or more associated companies controls directly or indirectly at least 10 per cent of the voting power in that other company. For the purposes of this 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, directly or indirectly, more than 50 per cent of the voting power in both of them.”

ARTICLE IV

Paragraphs (1), (2), (3), (6) and (7) of Article 12 of the Convention shall be deleted and replaced by the following, and the following new paragraph (8) shall be inserted immediately after paragraph(7):

“(1) Interest arising in a Contracting State which is derived and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) The term “interest” as used in this Article means income from Government securities, bonds or debentures, whether or not secured by mortgage and whether or not carrying a right to participate in profits, and other debt-claims of every kind as well as all other income assimilated to income from money lent by the taxation law of the State in which the income arises. The term “interest” shall not include any item which is treated as a distribution under the provisions of Article 11.

(3) The provisions of paragraph (1) of this Article 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-claim in respect of which the interest is paid is effectively connected with such permanent establishment or fixed base. In such a case the provisions of Article 8 or Article 15, as the case may be, shall apply.”

“(6) Where, owing to 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, for whatever reason, 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 shall remain taxable according to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(7) Any provision in the law of either Contracting State relating only to interest paid to a non-resident company shall not operate so as to require such interest paid to a resident of the other Contracting State to be treated as a distribution or dividend by the company paying such interest. The preceding sentence shall not apply to interest paid to a company of a Contracting State in which more than 50 per cent of the voting power is controlled, directly or indirectly, by a person or persons who are residents of the other Contracting State.

(8) The provisions of this Article shall not apply if the debt-claim in respect of which the interest is paid was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.”

ARTICLE V

Paragraphs (1), (3) and (5) of Article 13 of the Convention shall be deleted and replaced by the following, and the following new paragraph (6) shall be inserted immediately after paragraph (5):

“(1) Royalties arising in a Contracting State which are derived and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.”

“(3) The provisions of paragraph (1) of this Article 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 such a case the provisions of Article 8 or Article 15, as the case may be, shall apply.”

“(5) Where, owing to 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, for whatever reason, 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 shall remain taxable accordingly to the law of each Contracting State, due regard being had to the other provisions of this Convention.

(6) The provisions of this Article shall not apply if the right or property giving rise to the royalties was created or assigned mainly for the purpose of taking advantage of this Article and not for bona fide commercial reasons.”

ARTICLE VI

Article 19 of the Convention shall be deleted and replaced by the following

“Article 19

PENSIONS AND ANNUITIES

(1) Subject to the provisions of paragraph (2) of Article 20, pensions and other similar remuneration paid in consideration of past employment to a resident of a Contracting State and any annuity paid to such a resident shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph (1), and subject to the provisions of paragraph (2) of Article 20, pensions paid and other payments made under the social security legislation of a Contracting State may be taxed in that State.

(3) 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.”

ARTICLE VII

Article 23 of the Convention shall be deleted and replaced by the following:

“Article 23

OTHER INCOME

(1) Items of income of a resident of a Contracting State, wherever arising, other than income paid out of trusts and estates during the course of administration, which are not expressly mentioned in the foregoing Articles of this Convention shall be taxable only in that State.

(2) The provisions of paragraph (1) of this Article shall not apply to income, other than income from immovable property as defined in paragraph (2) of Article 7, 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 such case the provisions of Article 8 or Article 15, as the case may be, shall apply.”

ARTICLE VIII

Paragraph (2) of Article 25 of the Convention shall be deleted and replaced by the following:

- “(2) In Finland double taxation shall be eliminated as follows:
- (a) Where a resident of Finland derives income or chargeable gains which, in accordance with the provisions of the Convention, may be taxed in the United Kingdom, Finland shall, subject to the provisions of sub-paragraph (b) of this paragraph, allow as a deduction from the tax on income of that person, an amount equal to the tax on income or chargeable gains paid in the United Kingdom. Such deduction shall not, however, exceed that part of the tax on income, as computed before the deduction is given, which is attributable to the income or chargeable gains which may be taxed in the United Kingdom.
 - (b) Where a company which is a resident of Finland receives a tax credit under sub-paragraph (c) of paragraph (5) of Article 11 in respect of a dividend paid by a company which is a resident of the United Kingdom, the first-mentioned company shall be exempt from Finnish tax on the amount of the dividend. In that case, Finland shall allow as a deduction from the tax on the income of that company an amount equal to such proportion of the tax paid in the United Kingdom as the tax credit bears to the aggregate of the dividend and the tax credit. Such deduction shall not exceed that part of the Finnish tax as computed before the deduction is given, as is appropriate to the United Kingdom tax credit.
 - (c) Where a resident of Finland derives income which, in accordance with the provisions of Article 20, shall be taxable only in the United Kingdom, such income shall be exempt from Finnish tax; however, the graduated rates of Finnish tax may be calculated as though income thus exempted were included in the amount of the total income.”

ARTICLE IX

Paragraph (6) of Article 31 of the Convention shall be deleted and the existing paragraph (7) renumbered paragraph (6).

ARTICLE X

Each of the Contracting Parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of the notifications 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 6th April in the calendar year next following that in which the Protocol enters into force, and thereafter;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Protocol enters into force, and thereafter;
- (b) in Finland:
 - (i) in respect of tax withheld at source from a dividend and tax credit in respect thereof, on a dividend paid for any accounting period of the company which makes the distribution ending on or after 1st January 1990;
 - (ii) in respect of taxes withheld at source on income, other than a dividend and tax credit in respect thereof, derived on or after 1st January in the calendar year next following that in which the Protocol enters into force, and thereafter;

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- (iii) in respect of other taxes on income, and taxes on capital, for taxes chargeable for any tax year beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force, and thereafter

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

Done in duplicate at London this 26th day of September 1991 in the English and Finnish languages, both texts being equally authentic.

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) (Finland) Order 1970, as amended by three subsequent Protocols.

The Protocol amends the list of taxes in Finland covered by the Convention (Article I) and updates the definitions of “national” and “person” (Article II).

Following the reform of the corporation tax system in Finland, Article III of the Protocol gives a UK portfolio investor, receiving in 1990 a dividend from a Finnish company, thirteen twenty-firsts of the tax credit that would be available to a Finnish resident, and in 1991 and subsequent years five eighths of the tax credit available to a Finnish resident. The Protocol also gives a UK direct investor thirteen forty-seconds of the tax credit applicable in 1990 and five sixteenths of the tax credit available in 1991 and subsequent years. Tax may be charged in Finland on the aggregate of the dividend and the tax credit at rates not exceeding 15% for portfolio and 5% for direct investors. This is matched by the UK paying the full tax credit to Finnish resident portfolio investors and a half tax credit to direct investors, less 15% and 5% respectively. Arrangements for future adjustments are included to take account both of possible movements in corporation tax rates in either Contracting State and the consequent effects on the value of the tax credits. The Elimination of Double Taxation Article is updated to take account of the reciprocal tax credits (Article VIII).

Amendments are also made to the Interest and Royalties Articles of the Convention to provide for reciprocal exemption of interest and royalties and to bring in new anti-abuse rules (Articles IV and V).

A new Article is introduced to provide for the taxation of pensions and annuities solely in the state of residence of the recipient, save that pensions and other payments under the social security legislation of the Contracting State may be taxed in the paying state (Article VI). A new Other Income Article replaces that currently dealing with income not expressly mentioned (Article VII).

The Protocol is to take effect in the UK on or after 1st April in respect of corporation tax and on or after 6th April for income tax and capital gains tax in the calendar year next following that in which it enters into force. The Protocol is to take effect in Finland in respect of dividends paid for any accounting period of the company making the distribution ending on or after 1st January 1990, in respect of taxes withheld at source on income, other than dividends, derived on or after 1st January in the calendar year next following that in which the Protocol enters into force, and in respect of other taxes on income and capital on or after 1st January in the calendar year next following that in which the Protocol enters into force. The date of entry into force will in due course be published in the London, Edinburgh and Belfast Gazettes

