
STATUTORY INSTRUMENTS

1996 No. 3165

INCOME TAX

The Double Taxation Relief (Taxes on Income) (Denmark) Order 1996

Made - - - - 19th December 1996

At the Court at Buckingham Palace, the 19th day of December 1996

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 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) (Denmark) Order 1996.
2. It is hereby declared—
 - (a) that the arrangements specified in the Protocol set out in Part I of the Schedule to this Order and in the Exchange of Notes constituting an Agreement set out in Part II of that Schedule, which vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1980(2), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1991(3), have been made with the Government of the Kingdom of Denmark 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 Denmark; and
 - (b) that it is expedient that those arrangements should have effect.

(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).
(2) S.I.1980/1960.
(3) S.I. 1991/2877.

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N. H. Nicholls
Clerk of the Privy Council

SCHEDULE

PART I

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF DENMARK TO AMEND 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 COPENHAGEN ON 11TH NOVEMBER 1980, AS AMENDED BY THE PROTOCOL SIGNED AT LONDON ON 1ST JULY 1991

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

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 Gains, signed at Copenhagen on 11th November 1980, as amended by the Protocol signed at London on 1st July 1991 (hereinafter referred to as “the Convention”);

Have agreed as follows:

ARTICLE I

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

“(i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise of a Contracting State, except when the ship or aircraft is operated solely between places in the other Contracting State;”.

ARTICLE II

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

“ARTICLE 8

Shipping and Air Transport

(1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

- (a) profits from the rental on a bareboat basis of ships or aircraft; and
- (b) profits 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;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to profits from the participation in a pool, a joint business or an international operating agency, but only to so much

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of the profits so derived as is attributable to the participant in proportion to its share 'in the joint operation.

(4) With respect to profits derived by the Danish, Norwegian and Swedish air transport consortium, known as the Scandinavian Airlines System (SAS), the provisions of paragraphs (1), (2) and (3) of this Article shall apply only to such proportion of the profits as corresponds to the participation in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of the Scandinavian Airlines System (SAS).”

ARTICLE III

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 a Contracting State to a resident of the other Contracting State may be taxed in that other State

(2) However, subject to the provisions of Council Directive [90/435/EEC](#) of 23rd July 1990, such dividends:

- (a) may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State the tax so charged shall not exceed 15 per cent. of the gross amount of the dividends;
- (b) shall be exempt from tax in the first-mentioned State if the beneficial owner referred to in sub-paragraph (a) of this paragraph is a company which holds directly at least 25 per cent. of the issued share capital of the company paying the dividends.

(3) 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 which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident and also includes any other item (other than interest relieved from tax under the provisions of Article 11 of this Convention) which, under the laws of the Contracting State of which the company paying the dividend is a resident, is treated as a dividend or distribution of a company.

(4) The provisions of paragraphs (1) and (2) 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 case the provisions of Article 7 or Article 14 of this Convention, as the case may be, shall apply.

(5) 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 undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the shares or other rights in

respect of which the dividend is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE IV

Paragraphs (6), (7) and (8) of Article 11 of the Convention shall be deleted and replaced by the following:

“(6) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the debt-claim in respect of which the interest is paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE V

(1) Paragraphs (1) and (2) of Article 12 of the Convention shall be deleted and replaced by the following:

“(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.

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

(2) Paragraphs (5), (6) and (7) of Article 12 of the Convention shall be deleted and replaced by the following:

“(5) The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment.”

ARTICLE VI

Paragraph (3) of Article 13 of the Convention shall be deleted and replaced by the following:

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

With respect to gains derived by the Danish, Norwegian and Swedish air transport consortium known as the Scandinavian Airlines System (SAS), the provisions of this paragraph shall apply only to such proportion of the gains as corresponds to the participation in that consortium by Det Danske Luftfartsselskab (DDL), the Danish partner of the Scandinavian Airlines System (SAS).”

ARTICLE VII

Paragraph (4) of Article 15 of the Convention shall be deleted and replaced by the following:

“(4) Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic shall be taxable only in the Contracting State of which the enterprise operating the ship or aircraft is a resident provided that such remuneration is subject to tax in that Contracting State

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Where a resident of Denmark derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic by the Scandinavian Airlines System (SAS) consortium, such remuneration shall be taxable only in Denmark

(5) For the purposes of paragraph (4) of this Article, remuneration derived aboard a ship registered in the Danish International Shipping Register and covered by Section 48D of the Law on Tax at Source, introduced by Law No 364 of 1st July 1988, shall be deemed to be subject to tax in Denmark.”

ARTICLE VIII

Article 18 of the Convention shall be deleted and replaced by the following:

“ARTICLE 18

Pensions and similar payments

(1) Subject to the provisions of paragraph (2) of this Article and paragraph (2) of Article 19, pensions, annuities and other similar remuneration paid to an individual who is a resident of a Contracting State and is subject to tax in respect thereof in that State, shall be taxable only in that State.

(2) In the case of an individual who was a resident of a Contracting State and has become a resident of the other Contracting State, nothing in paragraph (1) of this Article shall affect the right of the first-mentioned State under its national laws to tax pensions, annuities and other similar remuneration arising in that State and paid to that individual.

(3) Notwithstanding the provisions of paragraph (1) of this Article, payments received by an individual who is a resident of a Contracting State, under the social security legislation of the other Contracting State, shall be taxable only in that other State.

(4) The term “annuities” means stated sums payable to an individual periodically at stated times, during his 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 IX

Paragraph (2) of Article 22 of the Convention shall be deleted and replaced by the following:

- (a) “(2) Subject to the provisions of sub-paragraph (f) of this paragraph, where a resident of Denmark derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Denmark shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax on the income paid in the United Kingdom.
- (b) Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in the United Kingdom.
- (c) Subject to the provisions of sub-paragraph (d) of this paragraph, dividends paid by a company which is a resident of the United Kingdom to a company which is a resident of Denmark and which holds directly at least 25 per cent. of the issued share capital of the company paying the dividends shall be exempt from tax in Denmark.
- (d) The provisions of sub-paragraph (c) of this paragraph shall apply only to the extent that:
 - (i) the profits out of which the dividends are paid have been subject to corporation tax in the United Kingdom, or to any other tax in the United Kingdom or elsewhere which is comparable to Danish tax; or

- (ii) the dividends paid by the company which is a resident of the United Kingdom represent dividends received in respect of shares or other rights in a company which is a resident of a third State, which would have been exempt from Danish tax if those shares or rights were held directly by the company which is a resident of Denmark.
- (e) In the case of dividends paid by a company which is a resident of the United Kingdom to a company which is a resident of Denmark and which holds directly at least 25 per cent. of the issued share capital of the company paying the dividends, if the dividends are not exempt from Danish tax in accordance with the provisions of sub-paragraph (c) of this paragraph, the credit shall take into account United Kingdom tax payable by the company paying the dividends in respect of the profits out of which such dividends are paid.
- (f) Where a resident of Denmark derives income which, in accordance with the provisions of this Convention shall be taxable only in the United Kingdom, Denmark may include this income in the tax base, but shall allow as a deduction from the income tax that part of the income tax which is attributable to the income derived from the United Kingdom.”

ARTICLE X

- (1) Paragraph (1) of Article 28 of the Convention shall be deleted and replaced by the following:

“(1) Where under any provision of this Convention income is relieved from Danish tax and, under the law in force in the United Kingdom, an individual, in respect of the said income is subject to tax by reference to the amount thereof which is remitted to or received in the United Kingdom and not by reference to the full amount thereof, then the relief to be allowed under this Convention in Denmark shall apply only to so much of the income as is taxed in the United Kingdom.”

- (2) Paragraph (3) of Article 28 of the Convention shall be deleted and replaced by the following:

“(3) Subject to the conditions specified in paragraph (4) of this Article, where an individual, who is a resident of a Contracting State, is a member of a pension scheme which is established in, and recognised for tax purposes by, the other Contracting State and exercises an employment in the first-mentioned State:

- (a) contributions paid by the individual to that pension scheme shall be relieved from tax in the first-mentioned State in the same way as if the pension scheme was recognised for tax purposes by that State; and
- (b) payments made to the pension scheme by or on behalf of the individual’s employer:
 - (i) shall not be deemed to be taxable income of the individual, and
 - (ii) shall be allowed as a deduction in computing the profits of the employer, in the first-mentioned State in the same way as if the pension scheme was recognised for tax purposes by that State.

- (4) The conditions specified in this paragraph are that:

- (a) the individual exercises his employment in the first-mentioned State for an employer who was his employer immediately before he began to exercise his employment in that State or is an associated employer of that employer;
- (b) the individual was a member of the pension scheme immediately before he became a resident of the first-mentioned State;
- (c) the pension scheme is accepted by the competent authority of the first-mentioned State as corresponding to a pension scheme which is recognised for tax purposes by that State.

- (5) For the purposes of this Article:

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- (a) the term “pension scheme” means:
 - (i) in the case of Denmark, a compulsory, employment-related arrangement (other than a social security scheme) in which the individual participates in order to secure retirement benefits, or in the absence of such an arrangement, a personal pension scheme, and
 - (ii) in the case of the United Kingdom, an employment-related arrangement established for the sole purpose of providing retirement benefits, or in the absence of such an arrangement, a personal pension scheme;
- (b) a pension scheme is recognised for tax purposes by a Contracting State if in that State:
 - (i) the individual’s contributions to the pension scheme qualify for tax relief, or
 - (ii) payments made to the pension scheme by or on behalf of the individual’s employer are not deemed to be taxable income of the individual;
- (c) employers are associated where:
 - (i) one participates directly or indirectly in the management, control or capital of the other, or
 - (ii) the same persons participate directly or indirectly in the management, control or capital of each of them.”

ARTICLE XI

(1) Each of the Contracting States shall notify to the other the completion of the procedures 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 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;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1 st April in the calendar year next following that in which the Protocol enters into force.
- (b) in Denmark, in respect of taxes for the income year which coincides with or replaces the calendar year immediately following that in which the Protocol enters into force and subsequent income years.

(2) Notwithstanding the provisions of paragraph (1) of this Article, the provisions of paragraph (5) of Article 15 of the Convention (as introduced by Article VII of this Protocol) shall have effect in respect of remuneration received for duties performed in employment on or after 1st January 1989.

(3) This Protocol shall remain in force as long as the Convention remains in force.

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

Done in duplicate at London this 15th day of October, 1996, in the English and Danish languages, both texts being equally authoritative

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

Nicholas Bonsor

For the Government of the Kingdom of Denmark:

Ole Lømsmann Poulsen

PART II

EXCHANGE OF NOTES

Your Excellency

London

15th October 1996

I have the honour to refer to the Protocol which has been signed today between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark (“the Protocol”) to amend 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 Copenhagen on 11 th November 1980 as amended by the Protocol signed at London on 1st July 1991 (“the Convention”), and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

with reference to Articles 10(6), 11(6) and 12(5) of the Convention as amended by the Protocol, in the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of one of those provisions, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State; and

with reference to Article 22 of the Convention, by continuing to use the criterion of a holding of voting power in paragraph (1)(b) of Article 22 the Contracting States are exercising the option provided in paragraph 2 of Article 3 of Council Directive 90/435 EEC of 23rd July 1990 to derogate from paragraph 1 of that Article by replacing the criterion of a holding in the capital of a company of another Member State by that of a holding of voting rights.

If the foregoing proposal is acceptable to the Government of the Kingdom of Denmark, I have the honour to suggest that the present Note and Your Excellency’s reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of this Protocol.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Nicholas Bonsor

Minister of State at the Foreign & Commonwealth Office

Your Excellency

London

15th October 1996

I have the honour to acknowledge receipt of Your Excellency’s Note of today which reads as follows:

“I have the honour to refer to the Protocol which has been signed today between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Denmark (“the Protocol”) to amend 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 Copenhagen on 11th November 1980 as amended by the Protocol signed at London on 1st July 1991 (“the Convention”), and to propose on behalf of the Government of the United Kingdom of Great Britain and Northern Ireland that:

with reference to Articles 10(6), 11(6) and 12(5) of the Convention as amended by the Protocol, in the event that a resident of a Contracting State is denied relief from taxation in the other Contracting State by reason of one of those provisions, the competent authority of that other Contracting State shall notify the competent authority of the first-mentioned Contracting State; and

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with reference to Article 22 of the Convention, by continuing to use the criterion of a holding of voting power in paragraph (1)(b) of Article 22 the Contracting States are exercising the option provided in paragraph 2 of Article 3 of Council Directive 90/435 EEC of 23rd July 1990 to derogate from paragraph 1 of that Article by replacing the criterion of a holding in the capital of a company of another Member State by that of a holding of voting rights.

If the foregoing proposal is acceptable to the Government of the Kingdom of Denmark, I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of this Protocol."

The foregoing proposal being acceptable to the Government of the Kingdom of Denmark, I have the honour to confirm that Your Excellency's Note and this Reply shall be regarded as constituting an agreement between the two Governments in this matter which shall enter into force at the same time as the entry into force of this Protocol

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Ole Lønsmann Poulsen

Ambassador of the Kingdom of Denmark

EXPLANATORY NOTE

(This note is not part of the Order)

The Protocol set out in the Schedule to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1980 as amended by the Protocol set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Denmark) Order 1991.

The Protocol amends the provisions dealing with shipping and air transport so that profits from the operation of ships or aircraft in international traffic, and income from employment aboard such ships or aircraft will be taxable in the operator's country of residence (Article I, II, VI & VII).

The dividends article is amended with the result that tax credits are no longer available to investors in one State who receive dividends from an enterprise of the other State (Article III).

Amendments are made to the dividends, interest and royalties articles to provide effective provisions against abuse of the articles (Articles III, IV & V).

The royalties article is amended to provide that royalties arising in one State which are derived and beneficially owned by a resident of the other State shall be taxable only in that other State (Article V).

The dependent personal services article is amended so that remuneration received from employment aboard a ship registered in the Danish International Shipping Register as detailed in Danish domestic legislation shall be treated as being subject to tax in Denmark (Article VII).

Amendments are made to the pensions article which will extend its provisions to personal pensions as well as employment pensions (Article VIII).

The elimination of double taxation article is updated in line with changes elsewhere in the Protocol (Article IX).

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The miscellaneous rules article is amended to ensure equality of treatment in relation to pension scheme contributions where individuals working for associated companies move between the United Kingdom and Denmark (Article X).

The Protocol will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect in the United Kingdom for corporation tax on or after 1st April and for income and capital gains tax on or after 6th April in the calendar year following that in which it enters into force. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.