

*Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation
(International and Other Provisions) Act 2010, for approval by resolution of that House.*

DRAFT STATUTORY INSTRUMENTS

2021 No. 0000

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief (Federal
Republic of Germany) Order 2021**

Made - - - - *****

At the Court at Windsor Castle, the ***** day of ***** 2021

Present,

The Queen's Most Excellent Majesty in Council

A draft of the Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010(1) and approved by resolution of that House. Accordingly, Her Majesty, in exercising the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Federal Republic of Germany) Order 2021.

Double taxation arrangements to have effect

2. It is declared that—

- (a) the arrangements specified in the Protocol set out in the Schedule to this Order, which further amend the arrangements set out in the Schedule to the Double Taxation Relief and

International Tax Enforcement (Federal Republic of Germany) Order 2010⁽²⁾, have been made with the Government of the Federal Republic of Germany;

- (b) those arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax, income tax and taxes of a similar character imposed by the laws of the Federal Republic of Germany; and
- (c) it is expedient that those arrangements should have effect.

Name
Clerk of the Privy Council

(2) [S.I. 2010/2975](#); the arrangements scheduled to that Order were amended by the arrangements set out in the Schedule to [S.I. 2014/1874](#).

SCHEDULE

Article 2

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE FEDERAL REPUBLIC OF GERMANY FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL SIGNED AT LONDON ON 30 MARCH 2010, AS AMENDED BY THE PROTOCOL SIGNED AT LONDON ON 17 MARCH 2014

The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany;
Desiring to conclude a Protocol amending the Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital signed at London on 30 March 2010, as amended by the Protocol signed at London on 17 March 2014 (hereinafter referred to as “the Convention”);

Have agreed as follows:

Article 1 [Title]

The Title shall be deleted and replaced by the following new Title:

“Convention between the United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany for the Elimination of Double Taxation with respect to Taxes on Income and on Capital and the Prevention of Tax Evasion and Avoidance”.

Article 2 [Preamble]

The Preamble shall be deleted and replaced by the following new Preamble:

“The United Kingdom of Great Britain and Northern Ireland and the Federal Republic of Germany;
Intending to eliminate double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States);

Have agreed as follows:”.

Article 3 [Permanent establishment]

1. Paragraph 4A shall be inserted after paragraph 4 of Article 5 as follows:

“(4A) Paragraph 4 shall not apply to a fixed place of business that is used or maintained by an enterprise if the same enterprise or a closely related enterprise carries on business activities at the same place or at another place in the same Contracting State and

- (a) that place or other place constitutes a permanent establishment for the enterprise or the closely related enterprise under the provisions of this Article, or
- (b) the overall activity resulting from the combination of the activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, is not of a preparatory or auxiliary character,

provided that the business activities carried on by the two enterprises at the same place, or by the same enterprise or closely related enterprises at the two places, constitute complementary functions that are part of a cohesive business operation.”.

2. Paragraph 8 shall be inserted after paragraph 7 of Article 5 as follows:

“(8) For the purposes of this Article, a person or enterprise is closely related to an enterprise if, based on all the relevant facts and circumstances, one has control of the other or both are under the control of the same persons or enterprises. In any case, a person or enterprise shall be considered to be closely related to an enterprise if one possesses directly

or indirectly more than 50 per cent of the beneficial interest in the other (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) or if another person or enterprise possesses directly or indirectly more than 50 per cent of the beneficial interest (or, in the case of a company, more than 50 per cent of the aggregate vote and value of the company's shares or of the beneficial equity interest in the company) in the person and the enterprise or in the two enterprises.”.

Article 4 [Dividends, Interest, Royalties, Other income]

Paragraph 6 of Article 10, paragraph 5 of Article 11, paragraph 5 of Article 12 and paragraph 5 of Article 21 shall be deleted.

Article 5 [Non-discrimination]

Paragraph 4 of Article 25 shall be deleted and replaced by the following paragraph:

“(4) Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, paragraph 4 of Article 12, or paragraph 4 of Article 21 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State. Similarly, any debts of an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned State.”.

Article 6 [Mutual agreement procedure]

In paragraph 2 of Article 26, the second sentence shall be deleted and replaced by the following sentence:

“Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.”.

Article 7 [Prevention of treaty abuse]

Article 30A shall be inserted after Article 30 as follows:

“Article 30A

Prevention of Treaty Abuse

Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.”.

Article 8 [Entry into force]

1. This Protocol shall be ratified; the instruments of ratification shall be exchanged as soon as possible.

2. This Protocol shall enter into force on the day of the exchange of the instruments of ratification. The Convention as amended by this Protocol shall thereupon have effect:

(a) in Germany:

(aa) in the case of taxes withheld at source, in respect of amounts paid on or after 1 January of the calendar year next following that in which this Protocol enters into force;

(bb) in the case of other taxes, in respect of taxes levied for periods beginning on or after 1 January of the calendar year next following that in which this Protocol enters into force;

- (b) in the United Kingdom:
- (aa) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April in the calendar year next following that in which this Protocol enters into force;
 - (bb) in respect of corporation tax, for any financial year beginning on or after 1 April in the calendar year next following that in which this Protocol enters into force;
 - (cc) in respect of taxes withheld at source, to income derived on or after 1 January in the calendar year next following that in which this Protocol enters into force.

Done in duplicate at London on 12th January 2021 in the English and German languages, both texts being equally authoritative.

Jesse Norman MP	Andreas Michaelis
For the	For the
United Kingdom of Great Britain and Northern Ireland	Federal Republic of Germany

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to the Order contains a protocol (“the Protocol”) which further amends a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federal Republic of Germany dealing with the elimination of double taxation with respect to taxes on income and on capital gains and the prevention of tax avoidance and evasion (“the Convention”). This Order brings the Protocol into effect.

The Convention was scheduled to the Double Taxation Relief and International Tax Enforcement (Federal Republic of Germany) Order 2010 ([S.I. 2010/2975](#)) and has previously been amended by the arrangements set out in the Schedule to the Double Taxation Relief (Federal Republic of Germany) Order of 2014 ([S.I. 2014/1874](#)).

The Convention aims to eliminate the double taxation of income and gains arising in one country and paid to residents of the other country. This is done by allocating the taxing rights that each country has under its domestic law over the same income and gains, and by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The Protocol continues this approach.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Protocol. Amendments are made to the preamble to the Convention and the Articles of the Convention relating to permanent establishment, dividends, interest, royalties, other income, non-discrimination and mutual agreement procedure. An Article relating to the prevention of treaty abuse is added to the Convention.

The Protocol will enter into force on the day of the exchange of the instruments of ratification. It will take effect as follows:

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Double Taxation Relief (Federal Republic of Germany) Order 2021 No. 634*

- (a) in the Federal Republic of Germany:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after 1st January of the calendar year next following that in which the Protocol enters into force;
 - (ii) in respect of other taxes on income, for taxes chargeable for any tax year beginning on or after 1st January of the calendar year next following that in which the Protocol enters into force; and
- (b) 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 1st April next following the date on which the Protocol enters into force;
 - (iii) in respect of taxes withheld at source, to income derived 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*.

A Tax Information and Impact Note has not been produced for the Order as it gives effect to a protocol amending a double taxation agreement. Double taxation agreements impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.