
EXPLANATORY NOTE

(This note is not part of the Order)

The Convention (as amended by the Protocol) with the United States of America (which replaces the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (The United States of America) Order 1980 (S.I.1980/568) as amended by the Supplementary Protocols of 1976, 1977 and 1979) is set out in Part I of the Schedule to this Order.

The Convention provides for business profits to be taxed only in the country of the taxpayer's residence unless they are profits attributable to a permanent establishment maintained by the taxpayer in the other country. Profits attributable to a permanent establishment may be taxed in the country in which the permanent establishment is situated but the attributable profits may include only the profits derived from the assets used, risks assumed and activities performed by the permanent establishment (Articles 5 and 7).

Income from real property and gains derived from the alienation of such property may be taxed in the country in which the property is situated (Articles 6 and 13).

Shipping and air transport profits of an enterprise of one country operating in international traffic shall be taxable only in that country (Article 8).

The Convention includes rules for determining taxable profits when a company in one country is associated with a company in the other (Article 9).

Subject to certain conditions, dividends shall not be taxed in the country of source where they are beneficially owned by a company that has owned shares representing 80 per cent. or more of the voting power of the company paying the dividends for a 12-month period ending on the date the dividend is declared, or where the dividend is beneficially owned by a pension scheme (Article 10). Otherwise, the rate of tax imposed in the country of source on dividends beneficially owned by a resident of the other country is not to exceed 5 per cent. of the gross amount of the dividends when the beneficial owner is a company owning, directly or indirectly, shares representing at least 10 per cent. of the voting power of the company paying the dividends. In all other cases the rate of tax shall not exceed 15 per cent. of the gross amount of the dividends.

In general, interest and royalties are to be taxed only in the country in which the beneficial owner is resident (Articles 11 and 12).

Gains arising from the disposal of personal property are normally to be taxed only in the country of the taxpayer's residence. Gains arising from the disposal of assets of a permanent establishment (other than real property) which the taxpayer has in the other country may be taxed in that other country, whether or not that permanent establishment existed at the time of the disposal (Article 13).

The earnings of employees resident in one country but working temporarily in the other country are, subject to certain conditions, to be taxed only in the country of the employee's residence (Article 14).

Fees received by a resident of one country in his capacity as a director of a company resident in the other country may be taxed in that latter country (Article 15). Income derived from the activities of entertainers and sportsmen may, with certain exceptions, be taxed in the country in which those activities are exercised (Article 16). Pensions (other than those paid under social security or similar legislation or in respect of Government service) and annuities are to be taxed only in the recipient's country of residence. In general, maintenance and child support payments shall be exempt from tax in both countries (Article 17). Government Service remuneration and pensions are normally taxable only by the country whose Government pays them (Article 19). Subject to certain conditions

payments made to visiting students and business apprentices are to be exempt from tax in the country visited (Article 20).

Special rules are included in respect of contributions paid by or on behalf of an individual to a pension scheme. In general, these rules allow relief for contributions paid to a pension scheme situated in one country during the period when the individual exercises an employment or self-employment in the other country. In addition any benefits accrued under the pension scheme during this period shall not be treated as part of the employee's taxable income; any contributions paid by or on behalf of the employer shall not be treated as part of the employee's taxable income and shall be allowed as a deduction in computing the business profits of the employer in the other country (Article 18).

Special rules are included in respect of income or profits from activities connected with offshore exploration and exploitation activities. Trading profits from such activities are, subject to a *de minimis* time rule, deemed to arise through a permanent establishment and may be taxed in the country where the activities are carried on. Employees may, subject to a *de minimis* time rule, be taxed in the country in which the employment is exercised (Article 21). There are also provisions covering gains on the disposal of offshore exploration and exploitation rights and assets (Article 13).

Other income not specified in the Convention will generally be taxed only by the country of which the beneficial owner is a resident (Article 22).

Special rules are provided which are designed to prevent misuse of the Convention by residents of third countries who pass income arising in one country through legal entities established, acquired, maintained or operated in the other with a principal purpose of obtaining the benefits of the Convention. These rules reinforce the general principle set out in Article 1(1), that the Convention applies only to residents of one or both countries (Article 23).

In general where income continues to be taxable in both countries, credit will be given by the country of the taxpayer's residence in respect of tax imposed by the other country (Article 24).

There are provisions safeguarding nationals and enterprises of one country against discriminatory taxation in the other country (Article 25). Provision is made for consultation and exchange of information and administrative assistance between the taxation authorities of the two countries (Articles 26 and 27).

The Exchange of Notes set out in Part III of the Schedule clarifies the intended interpretation of particular aspects of the Convention.

The Convention will enter into force on the date on which the instruments of ratification are exchanged. The Convention is to take effect in the United Kingdom, for taxes withheld at source, on or after the first day of the second month next following the date on which it enters into force and on or after 1st April in respect of corporation tax, on or after 6th April for income tax and capital gains tax and on or after 1st January next following the date which it enters into force for petroleum revenue tax. It will take effect in the United States of America for taxes withheld at source, on or after the first day of the second month next following the date on which it enters into force and in respect of all other taxes, on or after 1st January next 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*.