

1978 No. 1107

TAXES

The Double Taxation Relief (Taxes on Estates of Deceased Persons and Inheritances and on Gifts) (Republic of Ireland) Order 1978

Laid before the House of Commons in draft
Made - - - - - 31st July 1978

At the Court of Saint James, the 31st day of July 1978.

Present,
The Counsellors of State in Council

Whereas Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 21st day of July 1978, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas a draft of this Order has been approved by a resolution of the House of Commons:

Now, therefore, Her Majesty Queen Elizabeth The Queen Mother and Her Royal Highness The Princess Margaret, Countess of Snowdon, being authorised thereto by the said Letters Patent, and in exercise of the powers conferred by paragraph 7 of Schedule 7 to the Finance Act 1975(a), and of all other powers enabling Her Majesty, do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Estates of Deceased Persons and Inheritances and on Gifts) (Republic of Ireland) Order 1978.

2. It is hereby declared—

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Republic of Ireland with a view to affording relief from double taxation in relation to capital transfer tax and taxes of a similar character imposed by the laws of the Republic of Ireland; and
- (b) that it is expedient that these arrangements should have effect.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE**CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE REPUBLIC OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES OF DECEASED PERSONS AND INHERITANCES AND ON GIFTS**

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

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates of deceased persons and inheritances and on gifts;

Have agreed as follows:

ARTICLE 1**Scope**

This Convention shall apply to any person who is within the scope of a tax which is the subject of this Convention, and to any property by reference to which there is a charge to such a tax.

ARTICLE 2**Taxes covered**

- (1) The taxes which are the subject of this Convention are:
 - (a) in the Republic of Ireland:
 - (i) the gift tax, and
 - (ii) the inheritance tax;
 - (b) in the United Kingdom of Great Britain and Northern Ireland, the capital transfer tax.
- (2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

ARTICLE 3**General definitions**

- (1) In this Convention, unless the context otherwise requires:
 - (a) the term "nationals" means:
 - (i) in relation to the Republic of Ireland, all citizens of Ireland and all legal persons, associations or other entities deriving their status as such from the law in force in the Republic of Ireland;
 - (ii) in relation to the United Kingdom, citizens of the United Kingdom and Colonies, British subjects under Section 2 of the British Nationality Act 1948 whose notices given under that Section have

been acknowledged before the date of signature of this Convention, British subjects by virtue of Section 13(1) or Section 16 of the British Nationality Act 1948 or Section 1 of the British Nationality Act 1965, and British protected persons within the meaning of the British Nationality Act 1948; and all legal persons, associations or other entities deriving their status as such from the law in force in the United Kingdom;

- (b) the term “tax” means the gift tax or inheritance tax imposed in the Republic of Ireland or the capital transfer tax imposed in the United Kingdom, as the context requires;
- (c) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or the Republic of Ireland, as the context requires;
- (d) the term “person” includes an individual, a company and any other body of persons;
- (e) the term “company” means any body corporate or any entity which is treated as a body corporate for tax purposes;
- (f) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and in the case of the Republic of Ireland, the Revenue Commissioners or their authorised representative;
- (g) the term “event” includes a death.

(2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Convention.

ARTICLE 4

Fiscal domicile

(1) For the purposes of this Convention, the question whether a person is, or was at any material time, domiciled in a Contracting State shall be determined by whether he is, or was at that time, domiciled in that Contracting State in accordance with the law of that Contracting State or is or was treated as so domiciled for the purposes of a tax which is the subject of this Convention.

(2) Where by reason of the provision of paragraph (1) a person is, or was at any material time, domiciled in both Contracting States, then this question shall be determined in accordance with the following rules:

- (a) he shall be deemed to be domiciled in the Contracting State in which he has, or had at the material time, a permanent home available to him. If he has or had a permanent home available to him in both Contracting States, the domicile shall be deemed to be in the Contracting State with which his personal and economic relations are, or were at the material time, closer (centre of vital interests);

- (b) if the Contracting State in which he has or had his centre of vital interests cannot be determined, or if he has not or had not a permanent home available to him in either Contracting State, the domicile shall be deemed to be in the Contracting State in which he has, or had at the material time, an habitual abode;
- (c) if he has or had an habitual abode in both Contracting States or in neither of them, the domicile shall be deemed to be in the Contracting State of which he is, or was at the material time, a national;
- (d) if he is or was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

ARTICLE 5

Taxing rights

(1) Subject to the following provisions of this Convention, each Contracting State shall retain the right to tax which it would have under its own law apart from this Convention.

(2) For the purposes of paragraph (2) of Article 6 and paragraph (2) of Article 8, the Contracting State with subsidiary taxing rights shall be determined as follows:

- (a) in relation to property other than property comprised in a settlement, where a person's domicile has been determined under paragraph (2) of Article 4, that Contracting State shall be the Contracting State in which the person is or was, by virtue of that paragraph, not domiciled;
- (b) in relation to property comprised in a settlement:
 - (i) where the proper law of the settlement as regards that property at the time when the settlement was made was the law of the Republic of Ireland and the settlor's domicile at the time when the settlement was made has been determined under paragraph (1) of Article 4 as being in the United Kingdom, then that Contracting State shall be the United Kingdom;
 - (ii) where the proper law of the settlement as regards that property at the time when the settlement was made was not the law of the Republic of Ireland and the settlor's domicile at that time has been determined under paragraph (1) of Article 4 as being in the United Kingdom but under its own law the Republic of Ireland would impose tax on property outside its territory because at some later time either the proper law of the settlement as regards that property was the law of the Republic of Ireland or the settlor's domicile has been determined under the said paragraph as being in the Republic of Ireland, then that Contracting State shall be the Republic of Ireland;
 - (iii) subject to paragraph (ii) of this sub-paragraph, where the proper law of the settlement as regards that property at the time when the settlement was made was not the law of the Republic of Ireland and the settlor's domicile at that time has been determined under paragraph (2) of Article 4, then that Contracting State shall be the Contracting State in which the settlor was, by virtue of that paragraph, not domiciled at that time.

(3) In sub-paragraph (a) of paragraph (2) of this Article, the term “person” means, in the Republic of Ireland the disponent, and in the United Kingdom the transferor.

(4) In paragraph (2) of this Article, “settlement” has the meaning which it has under the law of the United Kingdom relating to capital transfer tax and for the purposes of that paragraph a settlement is made when property first becomes comprised in it.

ARTICLE 6

Situs

(1) For the purposes of this Convention, the situs of any property shall be determined by each Contracting State under its own law, except that, where part of the value by reference to which tax is imposed in the United Kingdom is represented by a liability to tax which is satisfied out of property situated outside the United Kingdom, then that part of the value shall be deemed to be attributable to that property.

(2) If the situs of any property as determined by one Contracting State under paragraph (1) of this Article is not the same as that so determined by the other Contracting State, and the credit to be allowed under Article 8 is thereby affected, then the question shall be determined exclusively under the law of the Contracting State which, by virtue of paragraph (2) of Article 5, has subsidiary taxing rights or, if there is no such Contracting State, it shall be determined by mutual agreement.

ARTICLE 7

Deduction of debts

In determining the amount on which tax is to be computed, permitted deductions shall be allowed under the law in force in the Contracting State in which the tax is imposed.

ARTICLE 8

Elimination of double taxation

(1) Where a Contracting State imposes tax on an event by reference to any property which is not situated in that Contracting State but is situated in the other Contracting State, the former Contracting State shall allow against so much of its tax (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of tax so attributable) equal to so much of the tax imposed in the other Contracting State on the same event as is attributable to such property.

(2) Where both Contracting States impose tax on an event by reference to any property which is not situated in either Contracting State but is situated in a third territory, the Contracting State which, by virtue of paragraph (2) of Article 5, has subsidiary taxing rights shall allow against so much of its tax (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of tax so attributable) equal to so much of the tax imposed in the other Contracting State on the same event as is attributable to such property.

(3) Any credit to be allowed in the Republic of Ireland under this Article in relation to gifts or inheritances shall be allowed only so as to relieve the tax imposed in the Republic of Ireland on the gift or inheritance which is reduced by the payment of the tax in respect of which that credit is to be allowed; and a gift which in the United Kingdom is a chargeable transfer shall be treated as reduced by the amount of tax imposed in the United Kingdom on that gift and borne by the transferor.

(4) For the purposes of this Article:

- (a) the tax attributable to any property imposed in a Contracting State is tax as reduced by the amount of any credit allowed by that Contracting State in respect of tax attributable to that property imposed in a territory other than a Contracting State;
- (b) tax is imposed in a Contracting State or a territory if it is chargeable under the law of that Contracting State or territory and duly paid; and
- (c) property includes property representing property.

ARTICLE 9

Time limit

Any claim for a credit or for a repayment of tax founded on the provisions of this Convention shall be made within six years from the date of the event in respect of which the claim is made.

ARTICLE 10

Non-discrimination

(1) The nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other Contracting State than the taxation levied on enterprises of that other Contracting State carrying on the same activities.

(3) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Contracting State are or may be subjected.

(4) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not domiciled in that Contracting State, any of the personal allowances, reliefs, and reductions for tax purposes which are granted to individuals so domiciled.

(5) In this Article the term "taxation" means taxes covered by this Convention.

ARTICLE 11

Mutual agreement procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those Contracting States, present his case to the competent authority of either Contracting State.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation which is not in accordance with the provisions of this Convention.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 12

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention and the domestic laws of the Contracting States concerning taxes covered by this Convention in so far as the taxation thereunder is in accordance with this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Convention.

(2) In no case shall the provisions of paragraph (1) be construed so as to impose on the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in either Contracting State;
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

ARTICLE 13

Diplomatic and consular officials

Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

ARTICLE 14

Entry into force

This Convention shall enter into force on the exchange of Notes confirming that the necessary steps have been taken to give it the force of law in the United Kingdom and in the Republic of Ireland and shall thereupon have effect:

- (a) in the Republic of Ireland:
 - (i) in respect of gift tax, from 28 February 1974;
 - (ii) in respect of inheritance tax, from 1 April 1975;
- (b) in the United Kingdom:
 - (i) in respect of capital transfer tax other than capital transfer tax on a death, from 27 March 1974;
 - (ii) in respect of capital transfer tax on a death, from 13 March 1975.

ARTICLE 15

Termination

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through the diplomatic channel, by giving notice of termination at least six months before the end of any calendar year after the year 1980. In such event the Convention shall cease to have effect at the end of the calendar year in which the notice is given but shall continue to apply in respect of property by reference to which there was a charge to tax which arose before the end of that calendar year.

In witness thereof the undersigned, duly authorised thereto by their respective Governments, have signed this Convention.

Done in two originals at London this 7th-day of December 1977.

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

FRANK JUDD

For the Government of the
Republic of Ireland:

PAUL KEATING

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Double Taxation Convention with the Republic of Ireland which is scheduled to this Order applies to death duties and gift taxes. The taxes covered by the Convention are the United Kingdom's capital transfer tax and the Republic of Ireland's gift and inheritance taxes. The Convention would also apply to any tax of a substantially similar character which may be imposed by either country.

Under the Convention each country retains the right to tax which it has under its domestic law. Where as a result tax is payable in both countries relief is provided.

The main rule is that each country is required to give a credit against its own tax if the property is situated in the other country.

Where both countries tax property which is situated in a third country the country with "subsidiary taxing rights" is required to give credit. Under the Convention a country has only a subsidiary taxing right if the deceased person (or, in the case of a lifetime gift, the donor) was domiciled for the purposes of the Convention in the other country. Where property is comprised in a settlement the rules for determining which country has subsidiary taxing rights depend in part on the proper law of the settlement and in part on the settlor's domicile.

Rules are provided for determining a person's domicile for the purposes of the Convention.

There is a provision for determining the situs of property; in general each country will apply its domestic law.

There are also provisions for safeguarding nationals of one country against discriminatory taxation in the other country and for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention applies to any person who or property which is within the scope of a tax which is covered by the Convention.

The Convention takes effect in the United Kingdom as regards capital transfer tax on a death from 13 March 1975 and on other occasions from 27 March 1974. The previous arrangements between the United Kingdom and the Republic of Ireland for the relief of double taxation on death came to an end on 12 March 1975.

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