

STATUTORY INSTRUMENTS

1985 No. 1997**INCOME TAX****The Double Taxation Relief (Taxes on Income)
(Finland) Order 1985**

Laid before the House of Commons in draft

Made - - - - - 18th December 1985

At the Court at Buckingham Palace, the 18th day of December 1985

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 497(8) of the Income and Corporation Taxes Act 1970(a), 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 497 of the said Income and Corporation Taxes Act 1970, 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 1985.

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(b), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Finland) Order 1973(c) and by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Finland) Order 1980(d), have been made with the Government 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.

G.I. de Deney,
Clerk of the Privy Council.

(a) 1970 c.10; section 497 was amended and extended by sections 98(2) and 100(1) of the Finance Act 1972 (c.41) and section 10 of the Capital Gains Tax Act 1979 (c.14).

(b) S.I. 1970/153.

(c) S.I. 1973/1327.

(d) S.I. 1980/710.

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 17 JULY 1969 AS AMENDED BY THE PROTOCOLS SIGNED AT LONDON ON 17 MAY 1973 AND 16 NOVEMBER 1979

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 17 July 1969, as amended by the Protocols signed at London on 17 May 1973 and 16 November 1979 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

Article 7 of the Convention shall be deleted and replaced by the following:

"ARTICLE 7

Income from immovable property

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2)(a) The term "immovable property" shall, subject to the provisions of sub-paragraphs (b) and (c) below, have the meaning which it has under the law of the Contracting State in which the property in question is situated.

(b) The term "immovable property" shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources.

(c) Ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) Where the ownership of shares or other corporate rights in a company entitles the owner of such shares or corporate rights to the enjoyment of

immovable property owned or leased by the company, the income from the direct use, letting, or use in any other form of such entitlement to enjoyment may be taxed in the Contracting State in which the immovable property is situated.

(5) The provisions of paragraphs (1) and (3) of this Article shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

(6) The provisions of paragraph (4) of this Article shall also apply to the income from an entitlement to enjoyment referred to in that paragraph of an enterprise and to income from such entitlement to enjoyment directly connected with immovable property used for the performance of independent personal services.”

ARTICLE II

Article 14 of the Convention shall be deleted and replaced by the following:

“ARTICLE 14

Capital gains

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property, as defined in paragraph (2) of Article 7, situated in the other Contracting State may be taxed in that other State.

(2) Gains derived by a resident of a Contracting State from the alienation of shares or other corporate rights referred to in paragraph (4) of Article 7 may be taxed in the Contracting State in which the immovable property owned or leased by the company is situated.

(3) Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) or of such fixed base, may be taxed in that other State.

(4) Notwithstanding the provisions of paragraph (3) of this Article, gains derived by a resident of a Contracting State from the alienation of ships or aircraft operated in international traffic and movable property pertaining to the operation of such ships or aircraft shall be taxable only in that State.

(5) Gains derived by a resident of a Contracting State from the alienation of rights to assets to be produced by the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other Contracting State, including rights to interests in or to the benefit of such assets or from the alienation of shares deriving their value or the greater part of their value directly or indirectly from such rights, may be taxed in that other State.

(6) Gains from the alienation of any property other than those mentioned in the preceding paragraphs of this Article shall be taxable only in the Contracting State of which the alienator is a resident.

(7) The provisions of paragraph (6) of this Article shall not affect the right of a Contracting State to levy according to its own law a tax on gains from the alienation of any property derived by an individual who is a resident of the other Contracting State and has been a resident of the first-mentioned Contracting State at any time during the five years immediately preceding the alienation of the property.”

ARTICLE III

Article 20 of the Convention shall be deleted and replaced by the following:

“ARTICLE 20

Government service

- (1)(a) Remuneration, other than a pension, paid by a Contracting State or a political subdivision or a public community or a local authority thereof to an individual in respect of services rendered to that State or subdivision or community or authority shall be taxable only in that State.
- (b) However, such remuneration shall be taxable only in the other Contracting State if the services are rendered in that State and the individual is a resident of that State who:
- (i) is a national of that State; or
 - (ii) did not become a resident of that State solely for the purpose of rendering the services.
- (2)(a) Any pension paid by, or out of funds created by, a Contracting State or a political subdivision or a public community or a local authority thereof to an individual in respect of services rendered to that State or subdivision or community or authority shall be taxable only in that State.
- (b) However, such pension shall be taxable only in the other Contracting State if the individual is a resident of, and a national of, that State.
- (3) The provisions of Articles 16, 17 and 19 shall apply to remuneration and pensions in respect of services rendered in connection with a business carried on by a Contracting State or a political subdivision or a public community or a local authority thereof.”

ARTICLE IV

Article 24 of the Convention shall be deleted and replaced by the following:

“ARTICLE 24

Capital

(1) Capital represented by immovable property, as defined in paragraph (2) of Article 7, owned by a resident of a Contracting State and situated in the other Contracting State, may be taxed in that other State.

(2) Capital represented by shares or other corporate rights referred to in paragraph (4) of Article 7 and owned by a resident of a Contracting State may be taxed in the Contracting State in which the immovable property owned or leased by the company is situated.

(3) Capital represented by movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State or by movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services, may be taxed in that other State.

(4) Notwithstanding the provisions of paragraph (3) of this Article, capital represented by ships or aircraft operated in international traffic and by movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting State of which the operator is a resident.

(5) All other elements of capital of a resident of a Contracting State shall be taxable only in that State.”

ARTICLE V

Sub-paragraph (d) of paragraph (2) of Article 25 of the Convention shall be deleted and replaced by the following:

“(d) 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 VI

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

“(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 the Convention. They may also consult together to consider measures to counteract improper use of the provisions of the Convention.”

ARTICLE VII

The following new Article shall be inserted immediately after Article 30:

"ARTICLE 30A

Miscellaneous rules applicable to certain offshore activities

(1) The provisions of this Article shall apply notwithstanding any other provision of this Convention where activities are carried on offshore (in this Article called "offshore activities") in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in a Contracting State.

(2) An enterprise of a Contracting State which carries on offshore activities in the other Contracting State shall, subject to paragraphs (3) and (5) of this Article, be deemed to be carrying on business in that other State through a permanent establishment situated therein.

(3) The provisions of paragraph (2) of this Article shall not apply where the offshore activities are carried on in the other Contracting State for a period or periods not exceeding in the aggregate 30 days in any twelve-month period. For the purpose of this paragraph:

- (a) where an enterprise of a Contracting State carrying on offshore activities in the other Contracting State is associated with another enterprise carrying on substantially similar offshore activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;
- (b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

(4) A resident of a Contracting State who carries on offshore activities in the other Contracting State, which consist of professional services or other independent activities of a similar character, shall be deemed to be performing those activities from a fixed base in that other State. However, income derived by a resident of a Contracting State in respect of such activities performed in the other Contracting State shall not be taxed in that other State if the activities are performed in the other State for a period or periods not exceeding in the aggregate 30 days in any twelve-month period.

(5) Profits derived by a resident of a Contracting State from the transportation of supplies or personnel by a ship or aircraft to a location where offshore activities are being carried on, or from the operation of tugboats or anchor handling vessels in connection with such activities, shall be taxable only in the Contracting State of which he is a resident.

- (6)(a) Subject to sub-paragraph (b) of this paragraph, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment connected with offshore activities in the other Contracting State may, to the extent that the duties are performed offshore in that other State, be taxed in that other State.
- (b) Salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment exercised aboard a ship or aircraft engaged in the transportation of supplies or personnel to a location where offshore activities are

being carried on in a Contracting State, or in respect of an employment exercised aboard a tugboat or anchor handling vessel in connection with such activities, may be taxed in the Contracting State of which the person deriving the profits from the operation of the ship or aircraft is a resident.”

ARTICLE VIII

Each of the Contracting Parties shall notify to the other the completion of the procedure required by its law for the bringing into force of this Protocol. This Protocol shall enter into force thirty days after the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom, for any year of assessment, financial year or chargeable period beginning on or after 1 April in the calendar year next following that in which the Protocol enters into force;
- (b) in Finland,
 - (i) in respect of taxes withheld at source, on income derived on or after 1 January in the calendar year next following that in which the Protocol enters into force;
 - (ii) in respect of other taxes on income, and taxes on capital, for taxes chargeable for any taxable year beginning on or after 1 January in the calendar year next following that in which the Protocol enters into force.

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

Done in duplicate at London this 1st day of October 1985 in the English and Finnish languages, both texts being equally authoritative.

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

For the Government of the
Republic of Finland:

Young

Ilkka Pastinen

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 two subsequent Protocols.

The Protocol clarifies the scope of the Income from immovable property Article in the Convention in relation to the enjoyment of immovable property owned or leased by companies (Article I). Changes are also made to the Capital gains and the Capital Articles in the Convention in respect of gains from the alienation of, and capital represented by, shares in such companies. The Capital gains Article is also amended to specifically cover the disposal of oil or gas rights. (Articles II and IV).

The Protocol introduces special rules in respect of income and profits from activities connected with offshore oil and gas exploration or exploitation (Article VII). Trading profits from such activities are deemed to arise through a permanent establishment or a fixed base and, subject to a de minimis time rule, may be taxed in the country in which the activities are carried on. Profits connected with the transportation of supplies or personnel, however, are to be taxed only in the country of the taxpayer's residence. Employees may generally be taxed in the country in which the employment is exercised.

A new Government service Article replaces the former Governmental functions Article (Article III) and a consequential change is made to the Elimination of double taxation Article (Article V).

The Protocol is to take effect in the United Kingdom on or after 1 April in the calendar year following that in which it enters into force.

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