
STATUTORY INSTRUMENTS

2013 No. 3149

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International
Tax Enforcement (Panama) Order 2013**

Made - - - - 11th December 2013

A draft of this 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 section 173(7) of the Finance Act 2006⁽²⁾ and approved by a 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 and section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Panama) Order 2013.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—
- (a) the arrangements specified in the Convention and Protocol set out in the Schedule to this Order have been made with the Government of the Republic of Panama;
 - (b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax and income tax and taxes of a similar character imposed by the laws of the Republic of Panama and for the purposes of assisting international tax enforcement; and
 - (c) it is expedient that those arrangements should have effect.

(1) 2010 c. 8.
(2) 2006 c. 25.

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Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 2

- (i) in relation to Panama, any individual and any legal person, partnership or from the laws in force in Panama;
 - (ii) in relation to the United Kingdom, not possessing the citizenship of any territory, provided he has the right of legal person, partnership or association laws in force in the United Kingdom;
- k) the term “business” includes the performance of activities of an independent character;
- l) the term “pension scheme” means any scheme of State which operates to administer or provide pension income for the benefit of one or more such arrangements:
 - (i) in the case of Panama, is organized under the laws in force in Panama, 1993; and
 - (ii) in the case of the United Kingdom, is a pension scheme (other than a pension scheme under Part 4 of the Finance Act 2004) and the pension scheme holders are exclusively pension scheme holders;

2. As regards the application of the Convention at any time under the law of that State for the purposes of the tax meaning under the applicable tax laws of that State prevailing

- d) if he is a national of both States or of neither of Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person is resident of both Contracting States, then the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State in which the person shall be deemed to be a resident for the purposes of this Convention. The determination shall be made by the competent authorities of the Contracting States, taking into account all relevant facts, by the competent authorities of the Contracting State in which the person is resident of either Contracting State for the purposes of this Convention, except those provided by Articles 21, 22 and 23.

Article 5

Permanent Establishment

1. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term "permanent establishment" includes especially:
 - a) a place of management;
 - b) a branch;
 - c) an office;
 - d) a factory;
 - e) a workshop; and

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1. Profits of an enterprise of a Contracting State from international traffic shall be taxable only in that State.

2. For the purposes of this Article, profits from the international traffic include:

- a) profits from the rental on a bareboat basis of ships
- b) profits from the use, maintenance or rental of containers (or other equipment for the transport of containers) used in

where such rental or such use, maintenance or rental, as well as the operation of ships or aircraft in international traffic.

3. The provisions of paragraph 1 shall also apply to a "pool", a joint business or an international operating agency.

Article 9

Associated Enterprises

1. Where:

- a) an enterprise of a Contracting State participates in the control or capital of an enterprise of the other Contracting State,
- b) the same persons participate directly or indirectly in the control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in relation to their business dealings that are not those that would be made or imposed between independent enterprises.

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- (iii) a financial institution which is unconnected with the payer; or
 - (iv) a company other than a company mentioned in paragraph (iii) provided that the competent authority which grant the benefits determines that its main purposes of any person concerned are the promotion or maintenance of that company to
- b) the interest is paid:
- (i) by a Contracting State, a political subdivision of a Contracting State, or a political subdivision of a Contracting State;
 - (ii) by a bank in the ordinary course of business;
 - (iii) on a quoted Eurobond.

5. The term "interest" as used in this Article means interest whether or not secured by mortgage and whether or not on the debtor's profits, and in particular, income from government securities and debentures. Penalty charges for a late payment shall not be included in this Article. The term shall not include any item which is excluded from the provisions of Article 10.

6. The provisions of paragraphs 1 and 2 shall not apply to interest, being a resident of a Contracting State, carries on a trade or profession in which the interest arises, through a permanent establishment in respect of which the interest is paid is effectively connected with that establishment. In such case the provisions of Article 7 shall apply.

Article 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of another Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the other Contracting State and according to the laws of that State, but if the beneficiary of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed the tax charged in the first-mentioned State on the royalties.

3. The term "royalties" as used in this Article means payments of any kind in consideration for the use of, or the right to use, any copyright in literary, artistic or scientific works, including cinematograph films, any patent, trade mark, design or model, process, or for the use of, or the right to use, industrial, commercial or scientific information (know how) concerning industrial commercial or scientific activity.

4. The provisions of paragraphs 1 and 2 shall not apply if the recipient of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise, through a permanent establishment, and the property in respect of which the royalties are paid is effectively connected with that establishment. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State if the recipient is a resident of that State. Where, however, the person paying the royalties is a resident of a Contracting State or not, has in a Contracting State a permanent establishment, in which the liability to pay the royalties was incurred, and the recipient has no permanent establishment in any Contracting State, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment is situated.

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- of the profits out of which the dividend is paid) United Kingdom tax computed by reference to the gains by reference to which the Panamanian tax
- b) a dividend which is paid by a company which is a resident of the United Kingdom shall be exempt if the conditions for exemption under the law of the
 - c) the profits of a permanent establishment in Panama the United Kingdom shall be exempted from United Kingdom tax applicable and the conditions for exemption under the law of the United Kingdom are met;
 - d) in the case of a dividend not exempted from tax under the law of the United Kingdom paid by a company which is a resident of Panama and which controls directly or indirectly the power in the company paying the dividend, the conditions for exemption set out in paragraphs 1 and 2 above shall also take into account the Panamanian tax on the profits out of which such dividend is paid.
3. For the purposes of paragraphs 1 and 2, profits, income or other amounts which are taxable in a Contracting State which may be taxed in the other Contracting State under the Convention shall be deemed to arise from sources in that State.

Chapter V

Special Provisions

Article 22

Article 23

Mutual Agreement P

1. Where a person considers that the actions of one or will result for him in taxation not in accordance with the Convention, irrespective of the remedies provided by the domestic law of the Contracting State, he may, at any time, present a claim to the competent authority of the Contracting State of which he is a resident, in accordance with paragraph 1 of Article 22, to that of the Contracting State of which the other Contracting State is a resident, to be presented within three years from the first notification of the taxation in accordance with the provisions of the Convention.

2. The competent authority shall endeavour, if the taxation in the Contracting State of which the person is a resident is not in accordance with the Convention, if it is not itself able to arrive at a satisfactory solution, to enter into an arrangement with the competent authority of the other Contracting State, to the extent that the taxation in the Contracting State of which the person is a resident is not in accordance with the Convention, to be implemented notwithstanding any time limits or other provisions of the Convention of the Contracting States.

3. The competent authorities of the Contracting States shall endeavour to reach an agreement on any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may also enter into an arrangement directly for the purpose of reaching an agreement in the cases referred to in paragraph 2.

5. The competent authorities may also agree on other arrangements which are not in accordance with the Convention, if such an agreement cannot be reached.

Done in duplicate at London this 29th day of July 2013 in
both texts being equally authoritative.

**FOR THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN
IRELAND**

**WILLIAM HAGUE
Secretary of State for Foreign and
Commonwealth Affairs**

FOR

**FERN
Minis**

PART 2

PROTOCOL TO THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF PANAMA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO INCOME AND ON CAPITAL

At the moment of signing the Convention for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income concluded between the United Kingdom of Great Britain and Northern Ireland and the Republic of Panama, the undersigned have agreed that the following shall be added to the Convention.

1. In relation to Article 2:

It is understood that the provisions of this Convention shall not apply to tolls, duties or similar payments that might be applicable to goods.

2. In relation to Article 4:

It is understood that the term “resident of a Contracting State” shall include:

- a) a pension scheme established in that State; and
- b) an organisation that is established and is operated in that State.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Convention and a Protocol (“the Arrangements”) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Panama dealing with the avoidance of double taxation and the prevention of fiscal evasion. This Order brings the Arrangements into effect.

The Arrangements aim 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/or by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Arrangements will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. They will take effect as follows:

- (a) in the United Kingdom:
 - (i) in respect of withholding taxes, on income derived on or after 1 January of the calendar year following the date of entry into force;
 - (ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6 April next following the date of entry into force;
 - (iii) in respect of corporation tax, for any financial year beginning on or after 1 April next following the date of entry into force; and
- (b) in Panama:
 - (i) in respect of withholding taxes, on income derived on or after 1 January of the calendar year following the date of entry into force;
 - (ii) in respect of income taxes and other taxes (other than withholding taxes), for any tax year beginning on or after 1 January of the calendar year following the date of entry 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 this Order as it gives effect to a previously announced policy to enact a double taxation agreement.