

2010 No. 2689

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

**The Double Taxation Relief and International Tax Enforcement
(Switzerland) Order 2010**

Made - - - - *10th November 2010*

At the Court at Buckingham Palace, the 10th day of November 2010

Present,

The Queen's Most Excellent Majesty in Council

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(a) and section 173(7) of the Finance Act 2006(b) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) 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 (Switzerland) Order 2010.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

- (a) the arrangements specified in the Protocols 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) (Switzerland) Order 1978(c), have been made with the Swiss Federal Council;
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar character

(a) 2010 c. 8.

(b) 2006 c. 25.

(c) S.I. 1978/1408, amended by S.I. 1982/714, 1994/3215 and 2007/3465.

imposed by the laws of the Swiss Confederation and for the purpose of assisting international tax enforcement; and

- (c) it is expedient that those arrangements should have effect.

Judith Simpson
Clerk of the Privy Council

SCHEDULE

Article 2

**PROTOCOL BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN
AND NORTHERN IRELAND AND THE SWISS CONFEDERATION
AMENDING THE CONVENTION FOR THE AVOIDANCE OF DOUBLE
TAXATION WITH RESPECT TO TAXES ON INCOME, SIGNED AT
LONDON ON 8 DECEMBER 1977, AS AMENDED BY THE PROTOCOLS
SIGNED AT LONDON ON 5 MARCH 1981, AT BERN ON 17 DECEMBER
1993 AND AT LONDON ON 26 JUNE 2007.**

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

and

the Swiss Federal Council;

Desiring to conclude a Protocol to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on 8 December 1977, as amended by the Protocols signed at London on 5 March 1981, at Bern on 17 December 1993 and at London on 26 June 2007 (hereinafter referred to as “the Convention”),

Have agreed as follows:

ARTICLE I

Article 24 (Mutual Agreement Procedure) of the Convention shall be deleted and replaced by the following Article:

“ARTICLE 24

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 law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.
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 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 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 communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.
5. Where,
 - a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States have resulted for that person in taxation not in accordance with the provisions of this Convention, and
 - b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within three years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.”

ARTICLE II

Article 25 (Exchange of Information) of the Convention shall be deleted and replaced by the following Article:

“ARTICLE 25

Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.
2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:
 - a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
 - b) to supply information which is 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 (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State shall have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws.”

ARTICLE III

The Exchange of Notes of 26 June 2007 which forms an integral part of the Convention shall hereby be terminated and replaced by the Additional Protocol between the Contracting States signed on the same date as this Protocol.

ARTICLE IV

1. Each of the Contracting States shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Protocol.

2. This Protocol shall enter into force on the date of the receipt of the later of these notifications and shall thereupon have effect:

- a) With respect to paragraph 5 of Article 24 of the Convention, three years after that date;
- b) For all other matters, for taxable years beginning on or after the first day of January of the year next following the entry into force of this Protocol.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Additional Protocol.

Done in duplicate at London this 7th day of September 2009 in the English and French languages, each text being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland: **For the Swiss Federal Council:**

Stephen Timms

Alexis P Lautenberg

**ADDITIONAL PROTOCOL BETWEEN THE UNITED KINGDOM OF
GREAT BRITAIN AND NORTHERN IRELAND AND THE SWISS
CONFEDERATION AMENDING THE CONVENTION FOR THE
AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON
INCOME, SIGNED AT LONDON ON 8 DECEMBER 1977, AS AMENDED BY
THE PROTOCOLS SIGNED AT LONDON ON 5 MARCH 1981, AT BERN ON
17 DECEMBER 1993 AND AT LONDON ON 26 JUNE 2007**

At the signing of the Protocol amending the Convention for the avoidance of double taxation with respect to taxes on income, signed at London on 8 December 1977, as amended by the Protocols signed at London on 5 March 1981, at Bern on 17 December 1993 and at London on 26 June 2007, the authorised signatories hereto have agreed the following provisions which shall form an integral part of the Convention:

1. In relation to paragraph 1 of Article 4 (Residence)

It is understood and confirmed that the term “resident of a Contracting State” includes:

- (a) a pension scheme established in that State; and
- (b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

2. In relation to sub-paragraph (a) (ii) of paragraph 2 of Article 10 (Dividends)

It is understood and confirmed that the term “pension scheme” means any plan, scheme, fund, trust or other arrangement established in a Contracting State which is:

- (a) generally exempt from income taxation in that State; and
- (b) operated principally to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

3. In relation to Article 15 (Dependent personal services)

It is understood that Article 15 applies to the employment benefit derived from stock-options regardless of when that benefit is taxed.

4. In relation to Article 25 (Exchange of information)

- a) It is understood that an exchange of information will only be requested once the requesting State has exhausted its normal procedures under domestic law to obtain the information.
- b) It is understood that the standard of “foreseeable relevance” is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that the Contracting States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.
- c) It is understood that the tax authorities of the requesting State shall provide the following information to the tax authorities of the requested State when making a request for information under Article 25 of the Convention:

- (i) the name and address of the person(s) under examination or investigation and, if available, other particulars facilitating that person's identification, such as date of birth, marital status, tax identification number;
 - (ii) the period of time for which the information is requested;
 - (iii) a statement of the information sought including its nature and the form in which the requesting State wishes to receive the information from the requested State;
 - (iv) the tax purpose for which the information is sought;
 - (v) the name and address of any person believed to be in possession of the requested information.
- d) It is understood that Article 25 of the Convention does not require the Contracting States to exchange information on an automatic or a spontaneous basis.
- e) It is understood that in case of an exchange of information, the administrative procedural rules regarding taxpayers' rights provided for in the requested Contracting State remain applicable before the information is transmitted to the requesting Contracting State. It is further understood that this provision aims at guaranteeing the taxpayer a fair procedure and not at preventing or unduly delaying the exchange of information process.

In witness whereof the undersigned, duly authorised thereto by their respective Governments, have signed this Additional Protocol.

Done in duplicate at London this 7th day of September 2009 in the English and French languages, each text being equally authoritative.

For the Government of the United Kingdom of Great Britain and Northern Ireland: **For the Swiss Federal Council:**

Stephen Timms

Alexis P Lautenberg

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains two Protocols (“the Protocols”) which further amend a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council for the Avoidance of Double Taxation with Respect to Taxes on Income (“the Convention”). The Convention was scheduled to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1978 (S.I. 1978/1408) and previously amended by the arrangements scheduled to the Double Taxation Relief (Taxes on Income) (Switzerland) Order 1982 (S.I. 1982/714), the Double Taxation Relief (Taxes On Income) (Switzerland) Order 1994 (S.I. 1994/3215) and the Double Taxation Relief (Taxes on Income) (Switzerland) Order (S.I. 2007/3465). This Order brings the Protocols into effect.

The Convention aims to eliminate the double taxation of income or gains arising in one country and paid to residents of the other country. It does this 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. It also has specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The Protocols continue that approach.

The Protocols replace Articles 24 and 25 of the Convention with updated mutual agreement procedure and exchange of information articles which are in line with the new international standards for mutual agreement and exchange of information as set out in the Model Tax Convention on Income and on Capital published by the Organisation for Economic Cooperation and Development (“OECD”). The Exchange of Notes of 26 June 2007 which previously formed an integral part of the Convention as to the interpretation and understanding of certain terms are also replaced.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Protocols.

The Protocols will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. They shall have effect:

- (a) with respect to paragraph 5 of Article 24 of the Convention, three years after the date of entry into force; and
- (b) for all other matters, for taxable years beginning on or after 1st January of the year next 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 full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.