
STATUTORY INSTRUMENTS

2013 No. 3147

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX
PETROLEUM REVENUE TAX**

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

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

- (a) the arrangements specified in the Protocol set out in the Schedule to this Order, which amend the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (India) Order 1993⁽³⁾, have been made with the Government of the Republic of India;
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax, income tax and petroleum revenue tax

(1) 2010 c. 8.

(2) 2006 c. 25.

(3) S.I. 1993/1801.

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- and taxes of a similar character imposed by the laws of the Republic of India and for the purposes of assisting international tax enforcement; and
- (c) it is expedient that those arrangements should have effect.

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 2

“ARTICLE 1

Dividends

1. Dividends paid by a company which is a resident of the other Contracting State may be taxed in that other State.

2. However, such dividends may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the law of that State if the beneficial owner of the dividends is a resident of the other Contracting State, provided that such taxation shall not exceed:

- (a) 15 per cent of the gross amount of the dividends if the recipient is an investment vehicle as defined in the meaning of Article 6 by an investment vehicle of the other Contracting State annually and whose income from such immovable property is derived from the other Contracting State;
- (b) 10 per cent of the gross amount of the dividends if the recipient is an individual resident of the other Contracting State.

The competent authorities of the Contracting States shall apply these limitations. The provisions of this paragraph shall not apply to a company in respect of the profits out of which the dividends are paid.

3. The term “dividends” as used in this Article means income from shares or other securities, not being debt-claims, participating in profits, as well as income which, according to the law of the Contracting State making the distribution is a resident.

4. The provisions of paragraphs 1 and 2 of this Article shall not apply to a company which is a resident of a Contracting State and which is a resident of a Contracting State.

“ARTICLE 2

Exchange of information

1. The competent authorities of the Contracting States shall exchange information (including documents or certified copies of the documents) necessary to carry out the provisions of this Convention or to the administrative or judicial authorities of the Contracting States concerning taxes of every kind imposed by or on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the exchange thereunder is not contrary to this Convention. The exchange shall be governed by Articles 1 and 2 of this Convention.

2. Any information received under paragraph 1 of this Article shall not be treated as secret in the same manner as information obtained under the provisions of the law and shall be disclosed only to persons or authorities (including courts) concerned with the assessment or collection of, the enforcement or determination of appeals in relation to, the taxes referred to in paragraph 1 or the oversight of the above. Such persons or authorities shall not be bound by confidentiality purposes. They may disclose the information in public or judicial proceedings. Notwithstanding the foregoing, information received by a Contracting State for the purposes when such information may be used for such or other purposes by the Contracting States and the competent authority of the supplying State shall retain confidentiality.

3. In no case shall the provisions of paragraphs 1 and 2 of this Article impose on a Contracting State the obligation:

- (a) to carry out administrative measures at variance with the administrative practices of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the law of that State.

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the provisions of its law.

6. Notwithstanding the provisions of paragraphs 3 and 4, a Contracting State for purposes of paragraph 3 or 4 shall not limit or accord any priority applicable to a revenue claim of its nature as such. In addition, a revenue claim accepted under paragraph 3 or 4 shall not, in that State, have any priority over the laws of the other Contracting State.

7. Proceedings with respect to the existence, validity or enforceability of a revenue claim in a Contracting State shall not be brought before the courts of any other Contracting State.

8. Where, at any time after a request has been made under paragraph 3 or 4 and before the other Contracting State has collected the relevant revenue claim or claims, the relevant revenue claim or claims shall be collected to the first-mentioned State, the relevant revenue claim or claims shall:

- (a) in the case of a request under paragraph 3, a revenue claim that is enforceable under the laws of that State and which cannot, under the laws of that State, prevent its collection;
- (b) in the case of a request under paragraph 4, a revenue claim in respect of which that State may, under its laws, suspend collection to ensure its collection the competent authority of that State shall notify the competent authority of the other State. If, in that other State, the first-mentioned State shall either suspend collection or suspend enforcement of the claim.

9. In no case shall the provisions of this Article be interpreted as imposing on a Contracting State the obligation:

ARTICLE X

1. Each of the Contracting States shall notify the other of the completion of the procedures required by its law for the Protocol shall enter into force on the date of the later of the two to have effect:

- (a) in both States in the case of taxes withheld at source after the date this Protocol enters into force;
- (b) in India, in respect of taxes levied for fiscal year after the date this Protocol enters into force;
- (c) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax beginning on or after 6th April in the calendar year in which this Protocol enters into force;
 - (ii) in respect of corporation tax, for an accounting period beginning on or after 1st April in the calendar year next following the date this Protocol enters into force;
 - (iii) in respect of petroleum revenue tax, for an accounting period beginning on or after 1st January in the calendar year next following the date this Protocol enters into force.

2. Notwithstanding the provisions of paragraph 1 of articles VI, VII & VIII of this Protocol shall apply in respect of a matter even if such matters pre-date the entry into force of this Protocol.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol (“the Protocol”) which amends the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of India for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains (“the Convention”). The Convention was scheduled to the Double Taxation Relief (Taxes on Income) (India) Order 1993 (S.I. 1993/1801). This Order brings the Protocol into effect.

The Convention aims to eliminate the double taxation of income 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/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 Protocol continues this approach.

The Protocol amends the Articles of the Convention relating to general definitions, fiscal domicile, dividends, partnerships, exchange of information, tax examinations abroad, assistance in the collection of taxes and limitation of benefits.

Article 1 provides for citation.

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

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

- (a) in both States in the case of taxes withheld at source, in respect of amounts paid on or after the date on which the Protocol enters into force;
- (b) in the United Kingdom:
 - (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April in the calendar year next following that in which the Protocol enters into force;
 - (ii) in respect of corporation tax, for any financial year beginning on or after 1st April in the calendar year next following that in which the Protocol enters into force;
 - (iii) in respect of petroleum revenue tax, for any chargeable period beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.
- (c) in India, in respect of taxes levied for fiscal years beginning on or after the date on which the Protocol enters 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.