
STATUTORY INSTRUMENTS

2013 No. 3152

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International
Tax Enforcement (Spain) 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 (Spain) 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 Kingdom of Spain;
 - (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 Kingdom of Spain 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

PART 1

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF IRELAND FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF TAX EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL

The United Kingdom of Great Britain and Northern Ireland and the Kingdom of Ireland conclude a Convention for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital.

ARTICLE 1

PERSONS COVERED

This Convention shall apply to persons who are resident in the United Kingdom or in Ireland.

ARTICLE 2

TAXES COVERED

1. This Convention shall apply to taxes on income levied by the Contracting State or of its political subdivisions or local authorities in which they are levied.

2. There shall be regarded as taxes on income and on capital, on total capital, or on elements of income or of capital

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2. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has no permanent home available to him in either State he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);
- b) if the State in which he has his centre of vital interests does not have a permanent home available to him in either State he shall be deemed a resident only of the State in which he has an habitual abode;
- c) if he has an habitual abode in both States or in neither of them he shall be deemed a resident only of the State of which he is a national;
- d) if he is a national of both States or of neither of them the Contracting States shall settle the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person is a resident of both Contracting States, then it shall be deemed to be a resident only of the State in which its place of effective management is situated.

4. For the purposes of applying this Convention:

- a) an item of income, profit or gain:
 - (i) derived from a Contracting State through a company or other similar entity that is established in the other Contracting State;
 - (ii) treated as the income of beneficiaries, recipients or persons entitled to the income.

- (i) derived from a Contracting State through a
any other similar entity that is established in that Co
 - (ii) treated as the income of beneficiaries, mem
partnership, trust, group of persons or other similar e
Contracting State; and
 - (iii) treated as the income of that partnership, tru
entity under the tax laws of the first-mentioned State
can be taxed under the tax laws of the first-mentione
- d) an item of income, profit or gain:
- (i) derived from a Contracting State through a
other similar entity that is established in that Contra
 - (ii) treated as the income of that partnership, tru
entity under the tax laws of the other Contracting St
shall not be eligible for the benefits of the Conventio
- e) an item of income, profit or gain:
- (i) derived from a Contracting State through a
other similar entity that is established in a State othe
 - (ii) treated as the income of the beneficiaries, m
partnership, group of persons or other similar entity
Contracting State and under the tax laws of the State

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5. For the purposes of the preceding paragraphs, the establishment shall be determined by the same method of sufficient reason to the contrary.

6. Where profits include items of income or capital under other Articles of this Convention, then the provisions of the provisions of this Article.

ARTICLE 8

SHIPPING AND AIR TRAFFIC

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

2. The provisions of paragraph 1 shall also apply to 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 an enterprise of a Contracting State and an enterprise of the other Contracting State,

- (i) 10 per cent of the gross amount of subparagraph a) (ii);
 - (ii) 15 per cent of the gross amount of paid out of income (including gains from immovable property within the meaning of the law of the Contracting State of which the investment vehicle which distributes most of the dividends from such immovable property is established in that State);
- b) shall, notwithstanding the provisions of paragraph 1, the Contracting State of which the company pays the dividends to the beneficial owner of the dividends is:
- (i) a company which is a resident of the Contracting State of which the company is paying the dividends (other than where the company is an investment vehicle as mentioned in paragraph 1);
 - (ii) a pension scheme which is a resident of the Contracting State of which the company is paying the dividends.

This paragraph shall not affect the taxation of the company in the Contracting State of which the dividends are paid.

3. The term “dividends” as used in this Article means dividends on shares or “jouissance” rights, mining shares, founders' shares, claims, participating in profits, as well as any other item of income treated as income from shares by the laws of the State of which the distribution is a resident.

4. The provisions of paragraphs 1 and 2 shall not apply to

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income may, notwithstanding the provisions of Articles 17 and 18, in which the activities of the entertainer or sportsman are

ARTICLE 17

PENSIONS

Subject to the provisions of paragraph 2 of Article 18, shall be paid to an individual who is a resident of a Contracting State

ARTICLE 18

GOVERNMENT SERVICES

1.
 - a) Salaries, wages and other similar remuneration paid by a political subdivision or a local authority to an individual for services rendered to that State or subdivision of that State.
 - b) However, such salaries, wages and other similar remuneration shall be paid in the other Contracting State if the services are rendered by an individual who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State when he rendered the services.
2.
 - a) Notwithstanding the provisions of paragraph 1, remuneration paid by, or out of funds created by, a political subdivision or a local authority to an individual for services rendered to that State or subdivision of that State shall be paid in the other Contracting State if the services are rendered by an individual who:
 - (i) is a national of that State; or
 - (ii) did not become a resident of that State when he rendered the services.

2. Notwithstanding the provisions of paragraph 1, a resident of a Contracting State out of income received by administering the estates of deceased persons and those of residents of the other Contracting State, that amount shall be paid from the sources, and in the same proportions, as the income received by the representatives out of which that amount is paid.

3. The provisions of paragraph 1 shall not apply to income derived from immovable property as defined in paragraph 2 of Article 6 if the person being a resident of a Contracting State, carries on business in that State through a permanent establishment situated therein, and the right to that income is effectively connected with such permanent establishment. Article 7 shall apply.

4. Where, by reason of a special relationship between a resident of a Contracting State and some other person, or between both of them and some other person referred to in that paragraph exceeds the amount (if any) which would be payable between them in the absence of such a relationship, the payment shall be limited to the last-mentioned amount. In such a case, the excess shall be paid according to the laws of each Contracting State, due regard being given to the provisions of this Convention.

ARTICLE 2

CAPITAL

1. Capital represented by immovable property referred to in paragraph 1 of a Contracting State and situated in the other Contracting State shall be deemed to be situated in the latter State.

2. Capital represented by movable property forming part of the estate of a resident of a Contracting State shall be deemed to be situated in that State.

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implemented notwithstanding any time limits or other provisions of the Contracting States, except such limitations as apply by agreement.

3. The competent authorities of the Contracting States shall resolve any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of any double taxation provided for in the Convention.

4. The competent authorities of the Contracting States shall resolve any difficulties or doubts arising directly, including by means of face to face meetings, for the interpretation or application of the Convention in the sense of the preceding paragraphs.

5. Where,
- a) under paragraph 1, a person has presented a case to a Contracting State on the basis that the actions of the other Contracting State have resulted for that person in taxation not in accordance with the Convention, and
 - b) the competent authorities are unable to reach an agreement under paragraph 2 within two years from the presentation of the case to the other Contracting State,

any unresolved issues arising from the case shall be referred to the competent authorities of the Contracting States by mutual request.

These unresolved issues shall not, however, be submitted to the administrative tribunals of that State if the person affected by the case is still entitled, under the domestic law of that State, to have these issues decided by the administrative tribunals of that State.

information may be used for such other purposes under the competent authority of the supplying State authorises such use.

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

- a) to carry out administrative measures at variance with the law of that or of the other Contracting State;
- b) to supply information which is not obtainable under the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade secret or professional secret or trade process, or information the disclosure of which is contrary to public policy (ordre public).

4. If information is requested by a Contracting State from another Contracting State shall use its information gathering powers to obtain such information, even though that other State may not need such information. The obligation contained in the preceding sentence is subject to such limitations as may be necessary in order to protect the security of the State. In no case shall such limitations be construed to permit a Contracting State to refuse information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to require a Contracting State to decline to supply information solely because the information is in the possession of an institution, nominee or person acting in an agency or a fiduciary capacity, or because ownership interests in a person.

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It is understood that the term “trust” means a trust that is governed by its domestic law.

III. With reference to subparagraph a) (ii) of paragraph 1

It is understood that the term “investment vehicle” means:

- (i) In Spain, any entity regulated under the Law of 28 February 1994 on Anónimas Cotizadas de Inversión en el Mercado Financiero (Anónimas Cotizadas de Inversión en el Mercado Financiero);
- (ii) In the United Kingdom, a real estate investment trust (REIT) as defined in the Corporation Tax Act 2010 and a property authorised investment fund (PAIF) within the meaning of Part 4A of the Authorised Investment Funds Regulations 2006/964).

IV. With reference to paragraph 4 of Article 6 (Income tax)

No income derived from an immovable property shall be taxable in Spain if the enjoyment of such immovable property on a time-sharing basis does not exceed two weeks in a calendar year.

V. With reference to Articles 20 (Other income) and 21 (Other income)

Residents of Spain who are beneficiaries of a United Kingdom trust shall be taxable on the gross amount of income they receive or are entitled to receive from the trust.

In such a case, Spain shall allow as a deduction from the gross amount an amount equal to the effective income tax paid in the United Kingdom in consequence of the income distribution after all relevant deductions.

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 Kingdom of Spain 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 after the period of three months following the date of the later of the notifications by each country of the completion of its legislative procedures. They will take effect as follows:

- (i) in respect of taxes withheld at source, on or after the date on which the Convention enters into force;
- (ii) in respect of other taxes, for taxation years beginning on or after the date on which the Convention enters into force;
- (iii) for all other matters, on or after the date on which the Convention enters into force.

Until such time as the Arrangements enter into force the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Spain) Order 1976 (S.I. 1976/1919), as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Spain) Order 1995 (S.I. 1995/765), continue to have effect.

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.