



Treaty Series No. 15 (2009)

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 Protocol signed at London on 5 March 1981 and the Protocol signed at Bern on 17 December 1993

London, 26 June 2007

[The Protocol entered into force on 22 December 2008]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 2009*

Cm 7676

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**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 PROTOCOL
SIGNED AT LONDON ON 5 MARCH 1981 AND BY THE PROTOCOL
SIGNED AT BERN ON 17 DECEMBER 1993**

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 Contracting Parties for the Avoidance of Double Taxation with respect to Taxes on Income, signed at London on 8 December 1977¹, as amended by the Protocol signed at London on 5 March 1981² and by the Protocol signed at Bern on 17 December 1993³ (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE I

A new sub-paragraph (l) of paragraph 1 shall be added to Article 3 (General definitions) of the Convention:

- "(l) the term 'conduit arrangement' means a transaction or series of transactions which is structured in such a way that a resident of a Contracting State entitled to the benefits of this Convention receives an item of income arising in the other Contracting State but that resident pays, directly or indirectly, all or substantially all of that income (at any time or in any form) to another person who is not a resident of either Contracting State and who, if it received that item of income directly from the other Contracting State, would not be entitled under a convention for the avoidance of double taxation between the State in which that other person is resident and the Contracting State in which the income arises, or otherwise, to benefits with respect to that item of income which are equivalent to, or more favourable than, those available under this Convention to a resident of a Contracting State and the main purpose of such structuring is obtaining benefits under this Convention."

¹ Treaty Series No. 102 (1978) Cmnd 7400

² Treaty Series No. 36 (1982) Cmnd 8639

³ Treaty Series No. 8 (1995) Cm 2738

ARTICLE II

Paragraph 3 of Article 4 (Residence) of the Convention shall be deleted and replaced by a new paragraph as follows:

“3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State in which the person’s place of effective management is exercised, and in doing so shall take into account all relevant factors. In the absence of such agreement, that person shall not be entitled to claim any benefits provided by this Convention except those provided by paragraph 1 of Article 22 (Elimination of double taxation), Article 23 (Non-discrimination) and Article 24 (Mutual agreement procedure).”

ARTICLE III

A. Paragraphs 1 to 3 of Article 10 (Dividends) of the Convention shall be deleted and replaced by the following:

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

2. However, such dividends:

- (a) shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:
 - (i) a company which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the capital in the company paying the dividends; or
 - (ii) a pension scheme;
- (b) except as provided in sub-paragraph (a), may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 15 per cent of the gross amount of the dividends.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations.”

B. Paragraphs 4 to 6 of Article 10 (Dividends) of the Convention shall be renumbered to be paragraphs 3 to 5 of the said Article.

C. The reference to paragraph 3 in the renumbered paragraph 4 (formerly paragraph 5) shall be deleted.

D. A new paragraph 6 shall be added to Article 10 (Dividends) of the Convention:

“6. The provisions of this Article shall not apply in respect of any dividend paid under, or as part of, a conduit arrangement.”

ARTICLE IV

A new paragraph 7 shall be added to Article 11 (Interest) of the Convention:

“7. The provisions of this Article shall not apply in respect of any interest paid under, or as part of, a conduit arrangement.”

ARTICLE V

A. Paragraph 2 of Article 12 (Royalties) of the Convention shall be deleted and replaced by the following:

“2. The term ‘royalties’ as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.”

B. A new paragraph 5 shall be added to Article 12 (Royalties) of the Convention:

“5. The provisions of this Article shall not apply in respect of any royalty paid under, or as part of, a conduit arrangement.”

ARTICLE VI

A new paragraph 6 shall be added to Article 13 (Capital Gains) of the Convention:

“6. The provisions of paragraph 5 shall not affect the right of the United Kingdom to levy according to its law a tax chargeable in respect of gains from the alienation of any property on a person who is, and has been at any time during the previous six fiscal years, a resident of the United Kingdom or on a person who is a resident of the United Kingdom at any time during the fiscal year in which the property is alienated.”

ARTICLE VII

Sub-paragraph (a) of paragraph 2 of Article 15 (Dependent personal services) shall be deleted and replaced by the following :

“(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned of that State, and”.

ARTICLE VIII

Article 18 (Pensions and annuities) of the Convention shall be deleted and replaced by the following:

“ARTICLE 18

Pensions

1. Subject to the provisions of paragraph 2 of Article 19, pensions and other similar remuneration paid to an individual who is a resident of a Contracting State, shall be taxable only in that State.
2. Notwithstanding the provisions of paragraph 1, a lump sum payment derived from a pension scheme established in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in the first-mentioned State.
3. Contributions made by or on behalf of an individual who exercises employment or self-employment in a Contracting State (‘the host state’) to a pension scheme that is recognised for tax purposes in the other Contracting State (‘the home state’) shall, for the purposes of:
 - (a) determining the individual’s tax payable in the host state; and
 - (b) determining the profits of his employer which may be taxed in the host state;

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in the host state, to the extent that they are not so treated by the home state.

4. Paragraph 3 applies only if the following conditions are met:

- a) the individual is subject to the legislation of the home state in accordance with the Agreement on the Free Movement of Persons signed on 21 June 1999⁴, between the Swiss Confederation on one side and the European Community and its Member States on the other side; and
- b) the individual was not a resident of the host state, and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted), immediately before he began to exercise employment or self-employment in the host state; and
- c) the pension scheme is accepted by the competent authority of the host state as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

5. For the purposes of paragraphs 2, 3 and 4:

- a) the term 'a pension scheme' means an arrangement in which the individual participates in order to secure retirement benefits payable in respect of the employment or self-employment referred to in paragraph 3;
- b) a pension scheme is recognised for tax purposes in a Contracting State if the contributions to the scheme would qualify for tax relief in that State and if payments made to the scheme by the individual's employer are not deemed in that State to be taxable income of the individual."

ARTICLE IX

A. A new paragraph 3 shall be added to Article 21 (Other income) as follows:

"3. Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable

⁴ Treaty Series No. 44 (2002) Cm 5639

according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.”

B. A new paragraph 4 shall be added to Article 21 (Other income) as follows:

“4. The provisions of this Article shall not apply in respect of any items of income referred to in paragraph 1 if paid under, or as part of, a conduit arrangement.”

ARTICLE X

A. Sub-paragraph (b) of paragraph 1 of Article 22 (Elimination of double taxation) shall be deleted and replaced as follows:

“(b) in the case of a dividend paid by a company which is a resident of Switzerland to a company which is resident in the United Kingdom and which controls directly or indirectly at least 10 per cent of the capital or voting power in the Swiss company, the credit shall take into account (in addition to any Swiss tax creditable under sub-paragraph (a)) the Swiss tax payable by the company in respect of the profits out of which such dividend is paid.”

B. Paragraph 3 of Article 22 (Elimination of double taxation) shall be deleted and replaced as follows:

“3. Where a resident of Switzerland derives dividends which, in accordance with the provisions of paragraph 2 of Article 10, may be taxed in the United Kingdom, Switzerland shall allow, upon request, a relief to that person. The relief may consist of:

- (a) a deduction from the Swiss tax on the income of that resident of an amount equal to the tax levied in the United Kingdom in accordance with the provisions of paragraph 2 of Article 10; such deduction shall not, however, exceed that part of the Swiss tax, as computed before the deduction is given, which is appropriate to the income which may be taxed in the United Kingdom; or
- (b) a lump sum reduction of the Swiss tax; or
- (c) a partial exemption of such dividends from Swiss tax, in any case consisting at least of the deduction of the tax levied in the United Kingdom on the gross amount of the dividends.

Switzerland shall determine the relief applicable and regulate the procedure in accordance with the Swiss provisions relating to the carrying out of international conventions of the Swiss Confederation for the avoidance of double taxation.”

ARTICLE XI

Paragraph 4 of Article 23 (Non-discrimination) shall be deleted and replaced as follows:

“Except where the provisions of paragraph 1 of Article 9, paragraphs 4 or 7 of Article 11, paragraphs 4 or 5 of Article 12, or paragraphs 3 or 4 of Article 21 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned State.”

ARTICLE XII

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

“ARTICLE 25

Exchange of information

1. In relation to the taxes which are the subject of this Convention, the competent authorities of the Contracting States shall, on request, exchange such information as is foreseeably relevant:

- (a) for carrying out the provisions of this Convention;
- (b) for the administration or enforcement of the domestic laws of each Contracting State in the case of holding companies;
- (c) for the administration or enforcement of the domestic laws of each Contracting State in cases of tax fraud or the like.

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 covered by this Convention, 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.

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.

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall provide the requested information even though that other Contracting State may not need such information for its own tax purposes.

5. In cases of tax fraud or the like, banking and other professional secrecy provisions shall not preclude the furnishing of information to the competent authority of the requesting State.”

ARTICLE XIII

A. In paragraph 8 of Article 27 (Miscellaneous rules) the words “or tax credit” shall be deleted.

B. Paragraph 9 of Article 27 (Miscellaneous rules) shall be deleted.

ARTICLE XIV

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

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

(a) in Switzerland:

(i) with respect to taxes withheld at source on dividends due on or after the first day of January of the year next following the entry into force of the Protocol;

(ii) in respect of other taxes for taxation years beginning on or after the first day of January of the year next following the year of the entry into force of the Protocol;

- (iii) with respect to exchange of information falling within subparagraph (a) of paragraph 1 of Article 25, information shall be exchanged on or after the date on which this Protocol enters into force;
 - (iv) with respect to exchange of information falling within subparagraph (b) of paragraph 1 of Article 25, information shall be exchanged for any tax period beginning on or after the date on which this Protocol enters into force;
 - (v) with respect to exchange of information falling within subparagraph (c) of paragraph 1 of Article 25, information shall be exchanged for offences committed on or after the date on which this Protocol enters into force; and
- (b) in the United Kingdom:
- (i) with respect to 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; and
 - (ii) with respect to 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; and
 - (iii) with respect to tax credits in respect of dividends paid by companies which are residents of the United Kingdom, to terminate any entitlement to such tax credits in respect of dividends paid on or after 6th April next following the date on which this Protocol enters into force; and
 - (iv) with respect to exchange of information falling within subparagraph (a) of paragraph 1 of Article 25, information shall be exchanged on or after the date on which this Protocol enters into force;
 - (v) with respect to exchange of information falling within subparagraph (b) of paragraph 1 of Article 25, information shall be exchanged for any financial year beginning on or after the date on which this Protocol enters into force;
 - (vi) with respect to exchange of information falling within subparagraph (c) of paragraph 1 of Article 25, information shall be exchanged for offences committed on or after the date on which this Protocol enters into force.

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

Done in duplicate at London this 26th day of June 2007 in the English and German languages, both texts being equally authoritative.

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

For the Swiss Federal Council:

DAWN PRIMAROLO

ALEXIS P. LAUTENBERG

Swiss Embassy
London
26 June 2007

Excellency

I have the honour to refer to 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 Protocol signed at London on 5 March 1981, by the Protocol signed at Bern on 17 December 1993 and by the Protocol which is being signed today and to make on behalf of the Swiss Federal Council the following proposal:

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.

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.

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.

In relation to Article 25 (Exchange of information):

1. The Contracting States agree that under sub-paragraph (b) of paragraph 1 of Article 25, only information which is in the possession of the tax authorities and which does not necessitate specific investigation measures may be exchanged.
2. It is understood that in respect of sub-paragraph (b) of paragraph 1 of Article 25, Swiss companies covered by paragraph 2 of Article 28 of the Tax Harmonisation Act of 14 December 1990 are considered holding companies.
3. It is understood that "tax fraud" means fraudulent conduct deemed to be an offence under the laws of both States, and punishable by imprisonment, such as the use or presentation of false or falsified documents, including an incorrect profit and loss account or balance sheet, with the intention to deceive the authorities.
4. It is further understood that the term "[tax fraud] or the like" includes:
 - (a) the use or presentation of an incomplete statement of assets and / or an incorrect certificate of full disclosure at the conclusion of an investigation by the United Kingdom tax authorities;
 - (b) the destruction of records required to be prepared or maintained under a legal duty with the intention to deceive the United Kingdom tax authorities.
5. It is understood that, in cases of tax fraud or the like, banking secrecy provisions shall not preclude the furnishing of documentary evidence by banks and the forwarding thereof to the competent authority of the requesting State. The provision of information, however, presupposes a direct connection between the fraudulent conduct and the requested administrative assistance measures.
6. Both Contracting States agree that the application of the provisions of sub-paragraph (c) of paragraph 1 of Article 25 presupposes legal and actual reciprocity. It is further agreed that administrative assistance under that sub-paragraph shall not be provided if the request is unsubstantiated.

If the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland I have the honour to suggest that the present Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which will form an integral part of the Convention.

I avail myself of this opportunity to extend to Your Excellency the assurance of my highest consideration.

Alexis P Lautenberg

HM Treasury
London
26 June 2007

Excellency

I am in receipt of your note dated 26 June 2007 which states as follows:

“Excellency

I have the honour to refer to the Convention between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland for the avoidance of double taxation with respect to taxes on income, signed at London on 8 December 1977, as amended by the Protocol signed at London on 5 March 1981, by the Protocol signed at Bern on 17 December 1993 and by the Protocol which is being signed today and to make on behalf of the Swiss Federal Council the following proposal:

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.

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.

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.

In relation to Article 25 (Exchange of information):

1. The Contracting States agree that under sub-paragraph (b) of paragraph 1 of Article 25, only information which is in the possession of the tax authorities and which does not necessitate specific investigation measures may be exchanged.

2. It is understood that in respect of sub-paragraph (b) of paragraph 1 of Article 25, Swiss companies covered by paragraph 2 of Article 28 of the Tax Harmonisation Act of 14 December 1990 are considered holding companies.

3. It is understood that "tax fraud" means fraudulent conduct deemed to be an offence under the laws of both States, and punishable by imprisonment, such as the use or presentation of false or falsified documents, including an incorrect profit and loss account or balance sheet, with the intention to deceive the authorities.

4. It is further understood that the term "[tax fraud] or the like" includes:

- (a) the use or presentation of an incomplete statement of assets and / or an incorrect certificate of full disclosure at the conclusion of an investigation by the United Kingdom tax authorities;
- (b) the destruction of records required to be prepared or maintained under a legal duty with the intention to deceive the United Kingdom tax authorities.

5. It is understood that, in cases of tax fraud or the like, banking secrecy provisions shall not preclude the furnishing of documentary evidence by banks and the forwarding thereof to the competent authority of the requesting State. The provision of information, however, presupposes a direct connection between the fraudulent conduct and the requested administrative assistance measures.

6. Both Contracting States agree that the application of the provisions of sub-paragraph (c) of paragraph 1 of Article 25 presupposes legal and actual reciprocity. It is further agreed that administrative assistance under that sub-paragraph shall not be provided if the request is unsubstantiated.

If the foregoing proposal is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland I have the honour to suggest that the present

Note and Your Excellency's reply to that effect shall be regarded as constituting an agreement between the two Governments in this matter which will form an integral part of the Convention.

I avail myself of this opportunity to extend to your Excellency the assurance of my highest consideration."

The foregoing proposal being acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, I have the honour to confirm that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments in this matter which will form an integral part of the Convention.

I avail myself of this opportunity to renew to Your Excellency the assurances of my highest consideration.

Dawn Primarolo

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