
STATUTORY INSTRUMENTS

1981 No. 840

TAXES

The Double Taxation Relief (Taxes On Estates of Deceased Persons and Inheritances and On Gifts) (Sweden) Order 1981

Laid before the House of Commons in draft

Made - - - - 10th June 1981

At the Court at Buckingham Palace, the 10th day of June 1981.

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of the House of Commons.

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by paragraph 7 of Schedule 7 to the Finance Act 1975, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Taxes on Estates of Deceased Persons and Inheritances and on Gifts) (Sweden) Order 1981.

2. It is hereby declared—

- (a) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Kingdom of Sweden with a view to affording relief from double taxation in relation to capital transfer tax and taxes of a similar character imposed by the laws of the Kingdom of Sweden; and
- (b) it is expedient that these arrangements should have effect.

N. E. Leigh
Clerk of the Privy Council

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SCHEDULE

“CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES OF DECEASED PERSONS AND INHERITANCES AND ON GIFTS

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

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates of deceased persons and inheritances and on gifts;

Have agreed as follows:

Personal scope

ARTICLE 1. This Convention shall apply to any person who is within the scope of a tax which is the subject of this Convention.

Taxes covered

ARTICLE 2.—(1) The taxes which are the subject of this Convention are:

- (a) in the United Kingdom, the capital transfer tax;
- (b) in Sweden, the inheritance tax and the gift tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by either Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes.

General definitions

ARTICLE 3.—(1) In this Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland;
- (b) the term “Sweden” means the Kingdom of Sweden;
- (c) the term “national” means
 - i) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in either case he had the right of abode in the United Kingdom at the time of the death or transfer or at any other time at which his domicile falls to be determined;
 - (ii) in relation to Sweden, any individual possessing Swedish nationality;
- (d) the term “tax” means:
 - (i) the capital transfer tax imposed in the United Kingdom, or
 - (ii) the inheritance tax or the gift tax imposed in Sweden, or
 - (iii) any other tax imposed by a Contracting State to which this Convention applies by virtue of the provisions of paragraph (2) of Article 2, as the context requires;
- (e) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Sweden as the context requires;

- (f) the term “competent authority” means, in the case of the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and, in the case of Sweden, the Minister of the Budget or his authorised representative.

(2) As regards the application of this Convention by a Contracting State any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law of that Contracting State relating to the taxes which are the subject of this Convention.

Fiscal domicile

ARTICLE 4.—(1) For the purposes of this Convention, the question whether an individual was domiciled in a Contracting State shall be determined by whether he was domiciled in that Contracting State in accordance with the law of that Contracting State or is treated as so domiciled for the purposes of a tax which is the subject of this Convention.

(2) Where by reason of the provisions of paragraph (1) of this Article an individual was domiciled in both Contracting States, then his status shall be determined as follows:

- (a) he shall be deemed to be domiciled in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, the domicile shall be deemed to be in the Contracting State with which his personal and economic relations were closer (centre of vital interests);
- (b) if the Contracting State in which he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in either Contracting State, the domicile shall be deemed to be in the Contracting State in which he had an habitual abode;
- (c) if he had an habitual abode in both Contracting States or in neither of them, the domicile shall be deemed to be in the Contracting State of which he was a national; and
- (d) if he was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

General taxing rights

ARTICLE 5.—(1) Subject to the provisions of Articles 6, 7 and 8 and the following provisions of this Article, if the deceased or the transferor was domiciled in a Contracting State at the time of the death or transfer, property shall not be taxable in the other Contracting State unless he was a national of that other State at the time of the death or transfer and had been domiciled in that other State within the ten years immediately preceding that time.

(2) Paragraph (1) of this Article shall not apply where at the time of the death or transfer the deceased or the transferor was domiciled in Sweden and he

- (a) had not been domiciled in Sweden in accordance with the law of Sweden in seven or more of the ten years immediately preceding that time; and
- (b) was at that time a national of the United Kingdom but not of Sweden; and
- (c) was at that time domiciled in the United Kingdom in accordance with the law of the United Kingdom or treated as so domiciled for the purposes of a tax which is the subject of this Convention;

but in such a case, subject to the provisions of Articles 6, 7 and 8, property shall not be taxable in Sweden.

(3) Paragraph (1) of this Article shall not apply where at the time of the death or transfer the deceased or the transferor was domiciled in the United Kingdom and he

- (a) had not been resident in the United Kingdom in seven or more of the ten income tax years of assessment ending with the year of assessment in which that time falls; and

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- (b) was at that time a national of Sweden but not of the United Kingdom; and
- (c) had been domiciled in Sweden within the ten years immediately preceding that time;

but in such a case, subject to the provisions of Articles 6, 7 and 8 and of paragraph (4) of this Article, property shall not be taxable in the United Kingdom.

For the purposes of this paragraph the question whether an individual was resident in the United Kingdom shall be determined as for the purposes of income tax, but without regard to any dwelling-house available in the United Kingdom for his use.

(4) Paragraphs (1) and (3) of this Article shall not apply in the United Kingdom to property comprised in a settlement; but, subject to the provisions of Articles 6, 7 and 8, such property shall not be taxable in the United Kingdom if at the time when the settlement was made the settlor was domiciled in Sweden unless he was at that time a national of the United Kingdom and had been domiciled in the United Kingdom within the immediately preceding ten years.

(5) If by reason of any of the preceding paragraphs of this Article any property would be taxable only in one Contracting State and tax, though chargeable, is not paid (otherwise than as a result of a specific exemption, deduction, credit or allowance) in that Contracting State, tax may be imposed by reference to that property in the other Contracting State notwithstanding that paragraph.

Immovable property

ARTICLE 6.—(1) Immovable property may be taxed in the Contracting State in which such property is situated.

(2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated provided always that debts secured by mortgage or otherwise shall not be regarded as immovable property. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, an interest in the proceeds of sale of land which is held on a trust for sale, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) of this Article shall also apply to immovable property of an enterprise and to immovable property used for the performance of independent personal services.

Business property of a permanent establishment and assets pertaining to a fixed base used for the performance of independent personal services

ARTICLE 7.—(1) Except for assets referred to in Articles 6 and 8 assets forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

- (a) (2) (a) 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.
- (b) The term “permanent establishment” includes especially:
 - (i) a place of management;
 - (ii) a branch;
 - (iii) an office;
 - (iv) a factory;

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- (v) a workshop;
- (vi) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources; and
- (vii) a building site or construction or installation project which exists for more than 12 months.

(3) Notwithstanding the provisions of paragraph (2) of this Article, the term “permanent establishment” shall be deemed not to include:

- (a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
- (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;
- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e) of this paragraph provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(4) Except for assets described in Article 6, assets pertaining to a fixed base used for the performance of independent personal services may be taxed in the Contracting State in which the fixed base is situated.

(5) The provisions of paragraphs (1) and (4) of this Article shall apply to an interest in a partnership if the business of an enterprise is carried on, or independent personal services are performed, by the partnership.

Ships and aircraft

ARTICLE 8. Ships and aircraft operated in international traffic and boats engaged in inland waterways transport, and movable property pertaining to the operation of such ships, aircraft and boats, may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

Conflict as to the nature of property

ARTICLE 9.—(1) If the deceased or the transferor was domiciled in a Contracting State at the time of death or transfer, and

- (a) by the law of that Contracting State any right or interest is regarded as property not falling within Articles 6, 7 or 8, but
- (b) by the law of the other Contracting State that right or interest is regarded as property falling within those Articles,

then the Article of the Convention under which the property falls shall be determined by the law of the other Contracting State.

(2) If the deceased or the transferor was domiciled in neither Contracting State at the time of the death or transfer, and each Contracting State would regard any property as situated in its territory

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and in consequence tax would be imposed in both Contracting States, the competent authorities shall determine the situs of the property by mutual agreement.

Deductions

ARTICLE 10. In determining the amount on which tax is to be computed permitted deductions shall be allowed in accordance with the law in force in the Contracting State in which the tax is imposed.

Spouse transfers

ARTICLE 11.—(1) Property which passes to the spouse from a deceased person who was domiciled in or a national of Sweden and which may be taxed in the United Kingdom shall, where

- (a) the spouse was not domiciled in the United Kingdom but the transfer would have been wholly exempt had the spouse been so domiciled, and
- (b) a greater exemption for transfers between spouses would not have been given under the law of the United Kingdom apart from this Convention,

be exempt from tax in the United Kingdom to the extent of 50 per cent of the value transferred, calculated as a value on which no tax is payable and after taking account of all exemptions except those for transfers between spouses.

(2) Where property passes to a spouse from a deceased person who was domiciled in or a national of the United Kingdom and the property rights of the spouse are not regulated by Swedish general law regarding matrimonial property, then Swedish tax on such property shall, if the surviving spouse so requests, be assessed as if the provisions of Swedish law regulating matrimonial property rights were applicable to such property.

Credit provisions

ARTICLE 12.—(1) Where under this Convention the United Kingdom may impose tax by reference to any property other than property which the United Kingdom is entitled to tax in accordance with Articles 6, 7 or 8, then double taxation shall be avoided in the following manner:

- (a) Where Sweden imposes tax by reference to property in accordance with the said Articles 6, 7 or 8, the United Kingdom shall allow against the tax calculated according to its law by reference to that property a credit equal to the tax paid in Sweden by reference to that property.
- (b) Where Sweden imposes tax by reference to property not referred to in sub-paragraph (a) of this paragraph and
 - (i) except where the property was comprised in a settlement, if the deceased or transferor was a national of the United Kingdom and was domiciled in Sweden at the time of the death or transfer; or
 - (ii) where the property was comprised in a settlement, if at the time when the settlement was made the settlor was a national of the United Kingdom and was domiciled in Sweden,

then the United Kingdom shall allow against the tax calculated according to its law by reference to that property a credit equal to the tax paid in Sweden by reference to that property.

(2) Where under this Convention Sweden may impose tax by reference to any property other than property which Sweden is entitled to tax in accordance with the said Articles 6, 7 or 8, then double taxation shall be avoided in the following manner:

- (a) Where the United Kingdom imposes tax by reference to property in accordance with the said Articles 6, 7 or 8, Sweden shall allow against the tax calculated according to its law by reference to that property a credit equal to the tax paid in the United Kingdom by reference to that property.
 - (b) Where the United Kingdom imposes tax by reference to property not referred to in subparagraph (a) of this paragraph and the deceased or transfer was a national of Sweden and was domiciled in the United Kingdom at the time of the death or transfer, Sweden shall allow against the tax calculated according to its law by reference to that property a credit equal to the tax paid in the United Kingdom by reference to that property.
- (3) Any credit allowed in a Contracting State under paragraphs (1) or (2) of this Article shall not exceed the part of the tax imposed in that Contracting State which is attributable to the property by reference to which the credit is given.
- (4) For the purposes of this Article:
- (a) the tax attributable to any property imposed in a Contracting State is tax as reduced by the amount of any credit allowed by that Contracting State in respect of tax attributable to that property imposed outside Sweden or the United Kingdom; and
 - (b) tax is imposed in a Contracting State if it is chargeable under the law of that Contracting State and duly paid.

Time limit

ARTICLE 13. Any claim for a credit or for a refund of tax founded on the provisions of this Convention shall be made within six years from the date of the event giving rise to a liability to tax or, where later, within one year from the last date on which tax for which credit is given is due. The competent authority of a Contracting State may, in appropriate circumstances, extend this time limit where the final determination or the payment of tax in the other Contracting State is delayed.

Mutual agreement procedure

ARTICLE 14.—(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 laws of those Contracting States, present his case to the competent authority of either Contracting State.

(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 provisions of this 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 this 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.

Exchange of information

ARTICLE 15.—(1) The competent authorities of the Contracting States shall exchange such information as is necessary for carrying out the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a Court or administrative body) concerned with the assessment or collection of, or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of this Convention.

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(2) In no case shall the provisions of paragraph (1) of this Article be construed so as to impose on the competent authority of either Contracting State the obligation:

- (a) to carry out administrative measures at variance with the laws or administrative practice prevailing in either Contracting State;
- (b) to supply particulars which are 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.

Diplomatic and consular officials

ARTICLE 16. Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

Entry into force

ARTICLE 17.—(1) This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at London as soon as possible.

(2) This Convention shall enter into force immediately after the expiration of 30 days following the date on which the instruments of ratification are exchanged⁽¹⁾, and shall thereupon have effect:

- (a) in the United Kingdom in respect of property by reference to which there is a charge to tax which arises after that date;
- (b) in Sweden, as regards inheritance tax, in respect of estates of persons who die after that date, and, as regards gift tax, in respect of gifts by reference to which there is a charge to tax which arises after that date.

(3) Subject to the provisions of paragraph (4) of this Article, the Convention between the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Sweden for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Duties on the Estates of Deceased Persons signed at London on 14 October 1964⁽²⁾ (hereinafter referred to as “the 1964 Convention”) shall cease to have effect in respect of property to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

(4) Where on a death before 27 March 1981 any provision of the 1964 Convention would have afforded any greater relief than this Convention in respect of

- (a) any gift inter vivos made by the deceased before 27 March 1974, or
- (b) any settled property in which the deceased had a beneficial interest in possession before 27 March 1974 but not at any time thereafter,

that provision shall continue to have effect in the United Kingdom in relation to that gift or settled property.

(5) The 1964 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

(1) Instruments of ratification were exchanged on 19th May 1981.

(2) S.I. 1965/599.

Termination

ARTICLE 18.—(1) This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Convention at any time after 5 years from the date on which the Convention enters into force provided that at least 6 months' prior notice has been given through the diplomatic channel. In such event the Convention shall cease to have effect at the end of the period specified in the notice but shall continue to apply in respect of the estate of any person dying before the end of that period and in respect of any event (other than death) occurring before the end of that period and giving rise to liability to tax under the laws of either Contracting State.

(2) The termination of this Convention shall not have the effect of reviving any treaty or arrangement abrogated by this Convention or by treaties previously concluded between the Contracting States.

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

Done in duplicate at Stockholm this 8th day of October 1980, in the English and Swedish languages, both texts being equally authoritative.

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

DONALD MURRAY

For the Government of the Kingdom of Sweden:

OLA ULLSTEN

EXPLANATORY NOTE

The Double Taxation Convention with Sweden which forms the schedule to this Order applies to death duties and gift taxes. The taxes covered by the Convention are the United Kingdom capital transfer tax and the Swedish inheritance and gift taxes. The Convention will also apply to any tax of a substantially similar character which may be imposed by either country.

Under the Convention, the country in which the transferor was domiciled may tax property wherever it is situated. The other country may normally tax only specified categories of property, namely immovable property situated in its territory, business property of a permanent establishment or a fixed base in its territory and certain ships and aircraft. The other country may impose tax also if the transferor was a national of that country and had been domiciled in any part of its territory within the 10 years immediately preceding the transfer. There are special rules for settled property.

Where both countries impose tax, the Convention provides rules for determining which country is to give credit for the other's tax. In general, the country in which the transferor was not domiciled is required to give credit. But the country in which the transferor was domiciled is required to give credit for the other country's tax on the categories of property listed in the previous paragraph.

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Rules are provided for determining a person's domicile for the purposes of the Convention and a definition of nationality is also provided.

There are provisions for resolving conflicts as to the nature of property and for dealing with cases in which tax, though chargeable, is not paid.

There are provisions which extend the reliefs available in both countries for transfers between husband and wife.

There are also provisions for the exchange of information and consultation between the taxation authorities of the two countries.

The Convention applies to any person who is within the scope of a tax which is covered by the Convention.

The Convention has effect in the United Kingdom in respect of transfers giving rise to a tax charge on or after the Convention enters into force. The Convention will enter into force after each country has notified the other that its internal procedures for giving force of law to the Convention have been completed.