

1990 No. 2152

INCOME TAX

The Double Taxation Relief (Taxes on Income)
(Netherlands) Order 1990

Made - - - - 31st October 1990

At the Court at Buckingham Palace, the 31st day of October 1990

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the House of Commons in accordance with the provisions of section 788(10) of the Income and Corporation Taxes Act 1988(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of that draft:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by section 788 of the said Act, 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 Income) (Netherlands) Order 1990.

2. It is hereby declared—

(a) that the arrangements specified in the Protocol 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) (Netherlands) Order 1980(b) as amended by the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Netherlands) Order 1983(c), have been made with the Government of the Kingdom of the Netherlands with a view to affording relief from double taxation in relation to income tax, corporation tax or capital gains tax and taxes of a similar character imposed by the laws of the Netherlands; and

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

G. I. de Deney
Clerk of the Privy Council

(a) 1988 c.1; section 788 is extended by section 10 of the Capital Gains Tax Act 1979 (c.14).

(b) S.I. 1980/1961.

(c) S.I. 1983/1902.

SCHEDULE

PROTOCOL FURTHER AMENDING THE CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF THE NETHERLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS, SIGNED AT THE HAGUE ON 7TH NOVEMBER 1980, AS AMENDED BY THE PROTOCOL SIGNED AT LONDON ON 12TH JULY 1983

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

Desiring to conclude a further Protocol to amend the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of the Netherlands for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, signed at The Hague on 7th November 1980 (hereinafter referred to as "the Convention"), as amended by the Protocol signed at London on 12th July 1983;

Have agreed as follows:

ARTICLE I

Paragraph 1 of Article 2 of the Convention shall be deleted and replaced by the following:

"1. The taxes which are the subject of this Convention are:

(a) in the United Kingdom of Great Britain and Northern Ireland:

- (i) the income tax;
 - (ii) the corporation tax;
 - (iii) the capital gains tax; and
 - (iv) the petroleum revenue tax
- (hereinafter referred to as "United Kingdom tax");

(b) in the Netherlands:

- (i) the income tax (*inkomstenbelasting*);
- (ii) the wages tax (*loonbelasting*);
- (iii) the company tax (*vennootschapsbelasting*) including the Government share in the net profits of the exploitation of natural resources levied pursuant to the "Mijnwet 1810" (the Mining Act of 1810) with respect to concessions issued from 1967, or pursuant to the "Mijnwet Continentaal Plat 1965" (the Continental Shelf Mining Act of 1965); and

(iv) the dividend tax (*dividendbelasting*)
(hereinafter referred to as "Netherlands tax")."

ARTICLE II

Sub-paragraph (d)(i) of paragraph 1 of Article 3 of the Convention shall be deleted and replaced by the following:

"(i) in relation to the United Kingdom, any British citizen or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom, and any legal person, partnership, association or other entity deriving its status as such from the law in force in the United Kingdom;"

ARTICLE III

The following new sub-paragraph shall be inserted immediately after sub-paragraph (b) of paragraph 1 of Article 22 of the Convention:

"(c) For the purposes of sub-paragraphs (a) and (b) of this paragraph, in determining the amount of the Netherlands tax payable investment premiums and bonuses and disinvestment payments within the meaning of the Netherlands Investment Account Law ("Wet Investeringsrekening") shall not be taken into account in so far as that law was in force on and has not been modified after the date of signature of this Protocol or has been modified only in minor respects so as not to affect its general character or the way in which it is implemented."

ARTICLE IV

Article 22A of the Convention shall be deleted and replaced by the following:

"ARTICLE 22A

Miscellaneous Rules applicable to certain offshore activities

1. The provisions of this Article shall apply notwithstanding any other provision of this Convention.

2. In this Article the term "offshore activities" means activities which are carried on offshore in connection with the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in one of the States.

3. An enterprise of one of the States which carries on offshore activities in the other State shall, subject to paragraphs 4 and 6 of this Article, be deemed to be carrying on, in respect of those activities, business in that other State through a permanent establishment situated therein.

4. The provisions of paragraph 3 of this Article shall not apply where offshore activities are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months. For the purposes of this paragraph:

- (a) where an enterprise carrying on offshore activities in the other State is associated with another enterprise carrying on substantially similar activities there, the former enterprise shall be deemed to be carrying on all such activities of the latter enterprise, except to the extent that those activities are carried on at the same time as its own activities;
- (b) an enterprise shall be regarded as associated with another enterprise if one participates directly or indirectly in the management, control or capital of the other or if the same persons participate directly or indirectly in the management, control or capital of both enterprises.

5. A resident of one of the States who carries on offshore activities in the other State, which consist of professional services or other activities of an independent character, shall be deemed to be performing those activities from a fixed base in the other State. However, this paragraph shall not apply where such activities are carried on in the other State for a period or periods not exceeding in the aggregate 30 days in any period of 12 months.

6. Profits from the operation, in connection with offshore activities, of ships or aircraft which are in their existing state designed primarily for the purpose of transporting supplies or personnel to or between places where offshore activities are being carried on or for the purpose of towing or anchor handling, or for any combination of these activities, shall be taxable only in the State in which the place of effective management of the enterprise is situated.

7. Gains derived by a resident of one of the States from the alienation of rights to assets to be produced by the exploration or exploitation of the sea bed and sub-soil and their natural resources situated in the other State, including rights to interests in or to the benefit of such assets, or from the alienation of shares deriving their value or the greater part of their value directly or indirectly from such rights, may be taxed in that other State.

8. (a) Subject to sub-paragraph (b) of this paragraph, salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment connected with offshore activities in the other State may, to the extent that the employment is exercised offshore in that other State, be taxed in that other State.
- (b) Salaries, wages and other similar remuneration derived by a resident of one of the States in respect of an employment exercised aboard a ship or aircraft, to the profits from the operation of which paragraph 6 of this Article applies, shall be taxable only in the State of which the employee is a resident.

9. For the items of income which may be taxed in the United Kingdom according to paragraphs 3, 5 and 7 of this Article, the Netherlands shall allow a deduction from its tax which shall be computed in conformity with the rules laid down in paragraph 2(c) of Article 22.

10. Where documentary evidence is produced that tax has been paid in the United Kingdom on the items of income which may be taxed in the United Kingdom according to paragraph 8(a) of this Article, the Netherlands shall allow a reduction of its tax which shall be computed in conformity with the rules laid down in paragraph 2(b) of Article 22."

ARTICLE V

Each of the Contracting Governments shall notify to the other the completion of the procedure required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall thereupon have effect:

- (a) in the United Kingdom, for any year of assessment, financial year or chargeable period beginning on or after 1st April in the calendar year next following that in which the Protocol enters into force;
- (b) in the Netherlands, for taxable years and periods beginning on or after 1st January in the calendar year next following that in which the Protocol enters into force.

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

Done in duplicate at The Hague this 24th day of August 1989 in the English and Netherlands languages, both texts being equally authoritative.

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

For the Government of the
Kingdom of the Netherlands:

Michael Jenkins

H Van de Broek

EXPLANATORY NOTE

(This note is not part of the Order)

The Protocol scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Netherlands) Order 1980 (S.I. 1980/1961), as amended by the Protocol set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Netherlands) Order 1983 (S.I. 1983/1902) ("the 1983 Protocol").

The Protocol amends the list of taxes covered by the Convention and revises the definition of a United Kingdom national to reflect changes brought in by the British Nationality Act 1981 (c.61). It also provides that investment premiums and disinvestment payments under the Netherlands Investment Account Law should not be taken into account in computing Netherlands tax allowable as a credit against United Kingdom tax.

The rules provided in the 1983 Protocol for the avoidance of the double taxation of residents of the United Kingdom and the Netherlands in respect of income, profits and capital gains from certain offshore activities on the United Kingdom and Netherlands Continental Shelves have been replaced but there are no major changes of substance.

The only minor change is the provision of a specific rule for the taxation of supply vessels, tugboats and anchor handling vessels and a consequential amendment to the provisions concerning the taxation of persons employed on these vessels.

The Protocol enters into force when the completion of the necessary procedures has been notified by each country to the other. It then takes effect in the United Kingdom for any year of assessment, financial year or chargeable period beginning on or after 1st April in the calendar year following that in which it enters into force. The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.

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