
STATUTORY INSTRUMENTS

1994 No. 3214

INHERITANCE TAX

The Double Taxation Relief (Taxes on Estates of Deceased Persons and Inheritances) (Switzerland) Order 1994

Made - - - - 14th December 1994

At the Court at Buckingham Palace, the 14th day of December 1994

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 158(4) of the Inheritance Tax Act 1984(1), 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 158 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 Estates of Deceased Persons and Inheritances) (Switzerland) Order 1994.
2. It is hereby declared—
 - (a) that the arrangements specified in the Convention set out in Part I of the Schedule to this Order and in the Protocol set out in Part II of that Schedule have been made with the Swiss Federal Council, with a view to affording relief from double taxation in relation to inheritance tax and taxes of a similar character imposed by the laws of the Swiss Confederation; and
 - (b) that it is expedient that those arrangements should have effect.

(1) 1984 c. 51; section 158 was amended by section 70(2) of the Finance Act 1987 (c. 16). By virtue of section 100(1) and (2) of the Finance Act 1986 (c. 41) on and after 25th July 1986 the Capital Transfer Tax Act may be cited as the Inheritance Tax Act 1984, and any reference in that Act to capital transfer tax is to have effect as a reference to inheritance tax, except where the reference relates to a liability arising before 25th July 1986.

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R. P. Bulling
Deputy Clerk of the Privy Council

SCHEDULE

PART I

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 ESTATES AND INHERITANCES

The Government of the United Kingdom of Great Britain and Northern Ireland and the Swiss Federal Council;

Desiring to conclude a Convention for the avoidance of double taxation with respect to taxes on estates and inheritances;

Have agreed as follows:

Article 1

Estates and inheritances covered

This Convention shall apply:

- (a) to estates and inheritances where the deceased was domiciled, at the time of his death, in one or both of the Contracting States; and
- (b) to property comprised in a settlement made by a person who was domiciled, at the time the settlement was made, in one or both of the Contracting States.

Article 2

Taxes covered

(1) The existing taxes to which this Convention shall apply are:

- (a) in the United Kingdom, the inheritance tax, insofar as it applies to the estate of a deceased person (hereinafter referred to as “United Kingdom tax”);
- (b) in Switzerland, the cantonal and communal taxes imposed on estates and inheritances (hereinafter referred to as “Swiss tax”).

(2) The Convention shall also apply to any identical or substantially similar taxes which are imposed by a Contracting State, or a political subdivision or a local authority thereof after the date of signature of the Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws relating to taxes on estates and inheritances.

Article 3

General definitions

(1) For the purposes of this Convention, unless the context otherwise requires:

- (a) the term “United Kingdom” means Great Britain and Northern Ireland;
- (b) the term “Switzerland” means the Swiss Confederation;
- (c) the terms “a Contracting State” and “the other Contracting State” mean the United Kingdom or Switzerland, as the context requires;
- (d) the term “tax” means United Kingdom tax or Swiss tax, as the context requires;

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- (e) the term “enterprise” means an industrial or commercial undertaking;
 - (f) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting State except when the ship or aircraft is operated solely between places in the other Contracting State;
 - (g) the term “national” means:
 - (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;
 - (ii) in relation to Switzerland, any Swiss citizen and any legal person, partnership, association or other entity deriving its status as such from the law in force in Switzerland;
 - (h) the term “competent authority” means, in the United Kingdom, the Commissioners of Inland Revenue or their authorised representative, and, in Switzerland, the Director of the Federal Tax Administration or his authorised representative.
- (2) As regards the application of the Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning which it has under the law of that State concerning the taxes to which the Convention applies.

Article 4

Fiscal domicile

- (1) For the purposes of this Convention, a deceased person was domiciled:
- (a) in the United Kingdom if he was domiciled in the United Kingdom in accordance with the law of the United Kingdom or is treated as so domiciled for the purposes of a tax which is the subject of the Convention;
 - (b) in Switzerland if he was domiciled or was resident in Switzerland in accordance with the law of Switzerland or if he was a Swiss national and Swiss civil law requires his succession to be ruled in Switzerland.
- However, a deceased person shall be deemed not to be domiciled in one of the States if that State imposes tax only by reference to property situated in that State.
- (2) Where by reason of the provisions of paragraph (1) of this Article a deceased person was domiciled in both States, then, subject to the provisions of the attached Protocol, his status shall be determined as follows:
- (a) he shall be deemed to have been domiciled in the State in which he had a permanent home available to him; if he had a permanent home available to him in both States, he shall be deemed to have been domiciled in the State with which his personal and economic relations were closer (centre of vital interests);
 - (b) if the State in which he had his centre of vital interests cannot be determined, or if he did not have a permanent home available to him in either State, he shall be deemed to have been domiciled in the State in which he had an habitual abode;
 - (c) if he had an habitual abode in both States or in neither of them, he shall be deemed to have been domiciled in the State of which he was a national;
 - (d) if he was a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

Article 5

Immovable property

(1) Immovable property which forms part of the estate of a person domiciled in a Contracting State and which is situated in the other Contracting State may be taxed in that other State.

(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 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 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 professional services or other activities of an independent character.

Article 6

Movable property of a permanent establishment or a fixed base

Except for assets referred to in Articles 5 and 7 and in paragraph (2) of Article 8, moveable property of an enterprise which forms part of the estate of a person domiciled in a Contracting State which is the business property of a permanent establishment situated in the other Contracting State, may be taxed in that other State.

(2) 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.

(3) The term “permanent establishment” includes especially:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop; and
- (f) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

(4) A building site or construction or installation project constitutes a permanent establishment only if it lasts more than twelve months.

(5) Notwithstanding the preceding provisions 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 purposes 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

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- (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.

(6) Except for assets referred to in Articles 5 and 7 and in paragraph (2) of Article 8, movable property which forms part of the estate of a person domiciled in a Contracting State and used for the performance of professional services or other activities of an independent character and pertaining to a fixed base situated in the other Contracting State, may be taxed in that other State.

(7) The provisions of paragraphs (1) and (6) of this Article shall apply to an interest in a partnership if an enterprise is carried on, or professional services or other activities of an independent character are performed, by the partnership.

Article 7

Ships and aircraft

Ships and aircraft belonging to an enterprise which forms part of the estate of a person domiciled in a Contracting State and operating in international traffic and moveable property pertaining to the operation of such ships and aircraft, may be taxed in the other Contracting State if the place of effective management of the enterprise is situated therein.

Article 8

Other property

(1) Subject to the following provisions of this Convention:

- (a) property not dealt with in Articles 5, 6 and 7 which is situated in either Contracting State and forms part of the estate of a person:
 - (i) domiciled by virtue of the provisions of paragraph (1) of Article 4 solely in one of the Contracting States shall, subject to paragraph (2) of this Article, be taxable only in that latter Contracting State;
 - (ii) domiciled by virtue of the provisions of paragraph (1) of Article 4 in both Contracting States shall, subject to paragraph (3) of this Article, be taxable only in the Contracting State in which it is situated;
- (b) property not dealt with in Articles 5, 6 and 7 which is not situated in either Contracting State and forms part of the estate of a person:
 - (i) domiciled by virtue of the provisions of paragraph (1) of Article 4 solely in one of the Contracting States shall be taxable only in that Contracting State;
 - (ii) domiciled by virtue of the provisions of paragraph (1) of Article 4 in both Contracting States shall, subject to paragraph (4) of this Article, be taxable only in the Contracting State in which, under paragraph (2) of Article 4, the deceased was domiciled at the time of his death.

(2) Shares in a company incorporated in the United Kingdom which form part of the estate of a person domiciled by virtue of the provisions of paragraph (1) of Article 4 solely in Switzerland at the time of his death may also be taxed in the United Kingdom.

(3) Any property which is situated in Switzerland and which would be taxable only in Switzerland under paragraph (1)(a)(ii) of this Article may also be taxed in the United Kingdom if the deceased was:

- (a) by virtue of the provisions of paragraph (2) of Article 4 domiciled in the United Kingdom at the time of his death; or

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- (b) by virtue of those provisions domiciled in Switzerland at the time of his death but
 - (i) had been domiciled in the United Kingdom at any time within the five years preceding his death; and
 - (ii) was at that time a national of the United Kingdom without being a national of Switzerland.
- (4) Any property which is not situated in either Contracting State and which would be taxable only in Switzerland under paragraph (1)(b)
 - (ii) of this Article may also be taxed in the United Kingdom if the deceased:
 - (a) had been domiciled in the United Kingdom at any time within the five years preceding his death; and
 - (b) was at that time a national of the United Kingdom without being a national of Switzerland.

Article 9

Elimination of double taxation

(1) Where under this Convention the United Kingdom imposes tax on an event by reference to property:

- (a) which may be taxed in Switzerland in accordance with Article 5, 6 or 7, or
- (b) which may be taxed in the United Kingdom in accordance with paragraph (2), (3) or (4) of Article 8,

the United Kingdom shall allow against so much of its tax (as otherwise computed) as is attributable to such property a credit (not exceeding the amount of the tax so attributable) equal to so much of any tax imposed in Switzerland in connection with the same event as is attributable to such property.

(2) Subject to paragraph (3) of this Article, where the deceased was domiciled at the time of his death in Switzerland, Switzerland shall exempt from tax any property which, in relation to the same event and in accordance with Article 5, 6 or 7, may be taxed in the United Kingdom.

(3) Where any property is exempted from tax by any provision of this Convention, it may nevertheless be taken into account in computing the tax on other property or in determining the rate of such tax.

(4) For the purposes of this Article, tax is imposed in a Contracting State if it is chargeable under the law of that State and duly paid.

Article 10

Miscellaneous

- (1) If the deceased was domiciled in a Contracting State at the time of his death, and:
- (a) by the law of that State any right or interest is regarded as property not falling within Article 5, 6 or 7, but
 - (b) by the law of the other Contracting State that right or interest is regarded as property falling within those Articles,

then the nature of the right or interest shall be determined by the law of that other State.

(2) Property which passes to the spouse from a deceased person who was domiciled in or a national of Switzerland 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

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(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.

Article 11

Non-discrimination

(1) Nationals of a Contracting State shall not be subjected in the other Contracting State to any taxation, or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Nothing contained in this Article shall be construed as obliging a Contracting State to grant to persons not resident in that State any of the personal allowances and reliefs which are granted to persons so resident.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) In this Article the term "taxation" means taxes covered by this Convention.

Article 12

Mutual agreement procedure

(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 law of those States, present his case to the competent authority of either Contracting State.

(2) The competent authority, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, shall endeavour 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 the 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 the Convention. They may also consult together to consider measures to counteract improper use of the provisions of the 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.

Article 13

Exchange of information

(1) The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of

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administration) as is necessary for carrying out the provisions of this Convention in relation to the taxes which are the subject of the Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment, determination and collection of the taxes which are the subject of the Convention. No information as aforesaid shall be exchanged which would disclose any trade, business, banking, industrial or professional secret or trade process.

(2) In no case shall the provisions of this Article be construed as imposing upon either Contracting State the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or public policy (ordre public) or to supply particulars which are not procurable under its own laws or those of the State making the application.

Article 14

Diplomatic agents and consular officers

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

Article 15

Entry into force

(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 thirty days following the date on which the instruments of ratification are exchanged, and its provisions 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 Switzerland in respect of estates and inheritances of persons who die 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 Swiss Confederation for relief from Double Taxation with respect to Taxes on the Estates of Deceased Persons signed at London on 12th June 1956 (hereinafter referred to as “the 1956 Convention”) shall cease to have effect on the date of entry into force of this Convention.

(4) The 1956 Convention shall continue to have effect:

- (a) in the United Kingdom in respect of property by reference to which there is a charge to tax which arose on or before the date of entry into force of this Convention;
- (b) in Switzerland in respect of estates and inheritances of persons who died on or before the date of entry into force of this Convention.

Article 16

Termination

(1) This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate this Convention 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 property by

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reference to which there was a liability to tax under the laws of either Contracting State which arose before the end of that period.

(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.

PART II

PROTOCOL 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 ESTATES AND INHERITANCES

At the time of signing the Convention for the avoidance of double taxation with respect to taxes on estates and inheritances, concluded this day between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation the Contracting States have agreed as follows:

(1) With reference to Article 4:

An individual who was a national of one of the Contracting States without being a national of the other Contracting State and who was domiciled in the State of which he was a national immediately before coming to the other State shall not be domiciled in the other State for the purposes of this Convention if:

- (a) he was temporarily present in that other State by reason only of his employment or was a spouse or other dependant of a person temporarily in that other State for such purpose; and
- (b) that individual had retained the domicile of the State of which he was a national; and
- (c) that individual had no intention of becoming a permanent resident of the other Contracting State.

(2) With reference to paragraph (1)(b) of Article 4:

The reference to Swiss civil law concerns chapter 6 of the “Loi fédérale sur le droit international privé” of 18th December 1987.

(3) With reference to Article 8:

The situs of any property dealt with in that Article shall be determined by the law of the United Kingdom in effect at the date of entry into force of this Convention.

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

Done in duplicate at Berne this 17th day of December 1993, in the English and French languages, both texts being equally authoritative.

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

David Beattie

For the Swiss Federal Council:

Flavio Cotti

Done in duplicate at Berne this 17th day of December 1993, in the English and French languages, both texts being equally authoritative.

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

David Beattie

For the Swiss Federal Council:

Flavio Cotti

EXPLANATORY NOTE

(This note is not part of the Order)

The Convention with Switzerland is set out in Part I of the Schedule to this Order.

The Convention defines the scope of fiscal domicile separately for the United Kingdom and for Switzerland. In the case of the United Kingdom, this includes the deemed domicile rules contained in section 267 of the Inheritance Tax Act 1984. Where domicile is claimed by both countries, a deceased person's status is determined under special rules, but subject to the Protocol set out in Part II of the Schedule (Article 4).

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Immovable property which forms part of a deceased person's estate may be taxed in the country of domicile and in the country of situs (Article 5).

The Convention gives secondary taxing rights to the country where an enterprise has a fixed place of business (Article 6), and where the management of ships and aircraft operating internationally is situated (Article 7), where such property forms part of the estate of a person domiciled in the other country.

Other property is generally taxed solely in the country of domicile or, where domicile is claimed by both countries, in the country of situs, but subject to three exceptions. The United Kingdom retains a secondary taxing right notwithstanding domicile in Switzerland: on shares in United Kingdom companies; on property situated in Switzerland where the deceased person was domiciled in the United Kingdom at death or had been so domiciled within the previous 5 years, and was a national of the United Kingdom and was not a Swiss national; on property situated in a third country if at any time within 5 years of the death the deceased had been domiciled in the United Kingdom, and was a national of the United Kingdom and was not a Swiss national (Article 8).

Where property is taxable in both countries by virtue of any of the above Articles, the Convention resolves potential double taxation: by providing for the United Kingdom to give credit for Swiss tax on immovable property and business property situated in Switzerland, and on ships, aircraft and other property where Switzerland has the primary taxing rights; by providing for Switzerland to exempt immovable property and business property situated in the United Kingdom, and ships and aircraft of United Kingdom enterprises (Article 9).

The Convention gives an exemption from the tax charge in the United Kingdom of up to 50 per cent on property in the estate of a deceased person who is either a national of Switzerland or is domiciled there under Article 4, which passes on death to his or her spouse domiciled outside the United Kingdom (Article 10).

There are provisions safeguarding nationals and their enterprises of one country against discriminatory taxation in the other country (Article 11), and for consultation (Article 12) and limited exchange of information (Article 13) between the taxation authorities of the two countries.

A Protocol to the Convention is set out in Part II of the Schedule to this Order. The Protocol clarifies certain parts of the Convention as set out in Part I of the Schedule, as follows.

Deceased persons who are nationals of and domiciled in one country (and their dependants) cannot be treated as domiciled in the other country simply because of residence there for employment purposes.

The particular rules of Swiss civil law are identified for the purpose of domicile in Switzerland.

The situs of any property affected by Article 8 of the Convention shall be determined by the law of the United Kingdom in effect at the date of entry into force of this Convention.

The Convention and the Protocol will enter into force 30 days after the date on which instruments of ratification thereof are exchanged and will apply to deaths and other chargeable events occurring after that date.