
STATUTORY INSTRUMENTS

1995 No. 765

INCOME TAX

**The Double Taxation Relief (Taxes
on Income) (Spain) Order 1995**

Made - - - - 15th March 1995

At the Court at Buckingham Palace, the 15th day of March 1995

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⁽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 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) (Spain) Order 1995.
2. It is hereby declared—
 - (a) that the arrangements specified in the Exchange of Notes 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) (Spain) Order 1976⁽²⁾, have been made with the Government of Spain 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 Spain; and
 - (b) that it is expedient that those arrangements should have effect.

N. H. Nicholls
Clerk of the Privy Council

(1) 1988 c. 1; section 788 is extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12).
(2) S.I.1976/1919.

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SCHEDULE

Madrid, 13th December 1993

Your Excellency,

I have the honour to refer to the Convention between Spain and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital of 21st October 1975 (hereinafter “the Convention”), and to propose, on behalf of the Kingdom of Spain that, for the purposes of Article 6 (Income from immovable property), Article 13 (Capital gains) and Article 23 (Capital) of the Convention, income or capital gains from time-share rights not exceeding four weeks in any calendar year derived by a resident of a Contracting State, and capital represented thereby owned by a resident of a Contracting State, shall be taxable only in that State.

Accordingly:

- (a) Paragraph (3) of Article 6 of the Convention shall be deleted and replaced by the following:

“(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property but shall not apply to income derived from the ownership of time-share rights in respect of immovable property situated in a Contracting State which are owned by a resident of the other Contracting State and which may be used for a period or periods which in the aggregate do not exceed four weeks in any calendar year. In the computation of the period or periods, for the purposes of this paragraph, there shall be taken into account all time-share rights owned by a resident of a Contracting State in respect of immovable property situated in the other Contracting State.”

- (b) The following new paragraph shall be inserted immediately after paragraph (4) of Article 13 of the Convention:

“(5) Notwithstanding the provisions of paragraph (1) of this Article, capital gains from the alienation of time-share rights which may be used for periods not exceeding four weeks in any calendar year shall be taxable only in the Contracting State of which the alienator is a resident. In the computation of the period or periods, for the purposes of this paragraph, there shall be taken into account all time-share rights owned by a resident of a Contracting State in respect of immovable property situated in the other Contracting State.”; and

- (c) The following new paragraph shall be inserted immediately after paragraph (4) of Article 23 of the Convention:

“(5) Notwithstanding the provisions of paragraph (1) of this Article, capital represented by time-share rights of a resident of a Contracting State which may be used for periods not exceeding four weeks in any calendar year shall be taxable only in that State. In the computation of the period or periods, for the purposes of this paragraph, there shall be taken into account all time-share rights owned by a resident of a Contracting State in respect of immovable property situated in the other Contracting State.”

If the foregoing is acceptable to the United Kingdom of Great Britain and Northern Ireland, I beg to propose further that this note and your Excellency’s reply thereto shall constitute an Agreement between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland, which will form an integral part of the Convention.

Each Government shall notify the other Government as soon as possible in writing through the diplomatic channel of the completion of their respective requirements for entry into force of this Agreement.

This Agreement shall enter into force on the thirtieth day following the date of the latter of these notifications and shall thereupon have effect in respect of taxes relating to any tax year beginning on or after the first day of January 1992.

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

Javier Solana

His Excellency the Minister for Foreign Affairs Spain

Madrid

17th June 1994

Your Excellency

I have the honour to refer to your letter dated 13th December which in translation reads as follows:

“Your Excellency,

I have the honour to refer to the Convention between Spain and the United Kingdom of Great Britain and Northern Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Income and Capital of 21st October 1975 (hereinafter “the Convention”), and to propose, on behalf of the Kingdom of Spain that, for the purposes of Article 6 (Income from immovable property), Article 13 (Capital gains) and Article 23 (Capital) of the Convention, income or capital gains from time-share rights not exceeding four weeks in any calendar year derived by a resident of a Contracting State, and capital represented thereby owned by a resident of a Contracting State, shall be taxable only in that State.

Accordingly:

- (a) Paragraph (3) of Article 6 of the Convention shall be deleted and replaced by the following:

“(3) The provisions of paragraph (1) of this Article shall apply to income derived from the direct use, letting, or use in any other form of immovable property but shall not apply to income derived from the ownership of time-share rights in respect of immovable property situated in a Contracting State which are owned by a resident of the other Contracting State and which may be used for a period or periods which in the aggregate do not exceed four weeks in any calendar year. In the computation of the period or periods, for the purposes of this paragraph, there shall be taken into account all time-share rights owned by a resident of a Contracting State in respect of immovable property situated in the other Contracting State.”

- (b) The following new paragraph shall be inserted immediately after paragraph (4) of Article 13 of the Convention:

“(5) Notwithstanding the provisions of paragraph (1) of this Article, capital gains from the alienation of time-share rights which may be used for periods not exceeding four weeks in any calendar year shall be taxable only in the Contracting State of which the alienator is a resident. In the computation of the period or periods, for the purposes of this paragraph, there shall be taken into account all time-share rights owned by a resident of a Contracting State in respect of immovable property situated in the other Contracting State.”; and

- (c) The following new paragraph shall be inserted immediately after paragraph (4) of Article 23 of the Convention:

“(5) Notwithstanding the provisions of paragraph (1) of this Article, capital represented by time-share rights of a resident of a Contracting State which may be used for periods not exceeding four weeks in any calendar year shall be taxable only in that State. In the computation of the period or periods, for the purposes of this paragraph, there shall be taken into account all time-share rights owned by a resident of a Contracting State in respect of immovable property situated in the other Contracting State.”

If the foregoing is acceptable to the United Kingdom of Great Britain and Northern Ireland, I beg to propose further that this note and your Excellency’s reply thereto shall constitute an Agreement

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between the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland, which will form an integral part of the Convention.

Each Government shall notify the other Government as soon as possible in writing through the diplomatic channel of the completion of their respective requirements for entry into force of this Agreement.

This Agreement shall enter into force on the thirtieth day following the date of the latter of these notifications and shall thereupon have effect in respect of taxes relating to any tax year beginning on or after the first day of January 1992.

I avail myself of this opportunity to renew to your Excellency the assurance of my highest consideration.”

I have the honour to confirm that the foregoing is acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland and that your letter and this reply shall constitute an agreement between our two Governments which shall enter into force on the thirtieth day following the date of the latter of the two notifications by which each Party has notified the other of the completion of the procedures necessary for this purpose.

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

Robin Fearn

His Excellency the Ambassador of the United Kingdom of Great Britain and Northern Ireland

EXPLANATORY NOTE

(This note is not part of the Order)

The Exchange of Notes scheduled to this Order makes certain alterations to the Convention set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Spain) Order 1976.

The Exchange of Notes amends Article 6, Article 13 and Article 23 of the Convention to provide that for the purposes of income or capital gains from time-share rights not exceeding four weeks in any calendar year derived by a resident of a Contracting State, and capital represented thereby owned by a resident of a Contracting State, shall be taxable only in that State.

The Exchange of Notes will enter into force on the thirtieth day following the date of receipt of the latter of the notifications by each Government of the completion of their respective requirements for entry into force. Thereafter it has effect in respect of taxes relating to any tax year beginning on or after 1st January 1992. The date of entry into force will be published in the London, Edinburgh and Belfast Gazettes.