

S.I. No. 398/1993 - Double Taxation Relief (Taxes on Income and Capital Gains) (Sweden) Order, 1993.

S.I. No. 398 of 1993.

DOUBLE TAXATION RELIEF (TAXES ON INCOME AND CAPITAL GAINS) (SWEDEN) ORDER, 1993.

WHEREAS it is enacted by section 361 (1) of the Income Tax Act, 1967 (No. 6 of 1967), as amended by section 86 of the Finance Act, 1974 (No. 27 of 1974), section 38(1) of the Capital Gains Tax Act, 1975 (No. 20 of 1975), section 166 of the Corporation Tax Act, 1976 (No. 7 of 1976), and section 47 (4) of the Finance Act, 1983 (No. 15 of 1983), that if the Government by order declare that arrangements specified in the order have been made with the government of any territory outside the State in relation to affording relief from double taxation in respect of income tax, corporation tax or capital gains tax and any taxes of a similar character, imposed by the laws of the State or by the laws of that territory, and that it is expedient that those arrangements should have the force of law, the arrangements shall, notwithstanding anything in any enactment other than section 47 of the Finance Act, 1983, have the force of law:

AND WHEREAS it is further enacted by section 361 (6) of that Act that where such an order is proposed to be made, a draft thereof shall be laid before Dáil Éireann and the order shall not be made until a resolution approving of the draft has been passed by Dáil Éireann:

NOW, the Government, in exercise of the powers conferred on them in section 361 of the Income Tax Act, 1967 (No. 6 of 1967), as amended by section 38(1) of the Capital Gains Tax Act, 1975 (No. 20 of 1975), section 166 of the Corporation Tax Act, 1976 (No. 7 of 1976), and section 47 (4) of the Finance Act, 1983 (No. 15 of 1983), hereby order as follows:

1. This Order may be cited as the Double Taxation Relief (Taxes on Income and Capital Gains) (Sweden) Order, 1993.
2. It is hereby declared—

(a) that the arrangements specified in the Protocol set out in the Schedule to this Order have been made with the Government of Sweden in relation to affording relief from double taxation in respect of income tax, corporation tax or capital gains tax and any taxes of a similar character, imposed by the laws of the State or by the laws of Sweden, and

(*b*) that it is expedient that those arrangements should have the force of law.

SCHEDULE

PROTOCOL AMENDING THE CONVENTION BETWEEN IRELAND AND SWEDEN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED IN STOCKHOLM ON 8 OCTOBER 1986

The Government of Ireland and the Government of Sweden;

Desiring to conclude a Protocol to amend the Convention between Ireland and Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed in Stockholm on 8 October 1986 (hereinafter referred to as "the Convention");

Have agreed as follows:

ARTICLE 1

Subparagraph (*b*) of paragraph (1) of Article 2 of the Convention shall be deleted and replaced by the following:

"(*b*) in Sweden:

(i) the State income tax (den statliga inkomstkatten), including the sailors' tax (sjomansskatten) and the coupon tax (kupongskatten);

(ii) the special income tax on non-residents (sarskild inkomstkatt for utomlands bosatta);

(iii) the special income tax on non-resident artistes and athletes (sarskild inkomstkatt for utomlands bosatta artister m.fl.); and

(iv) the communal income tax (den kommunala inkomstkatten);

(hereinafter referred to as "Swedish tax")."

ARTICLE 2

(1) Paragraph (3) of Article 24 of the Convention shall be deleted.

(2) Paragraph (4) of Article 24 of the Convention shall be deleted and replaced by the following:

"(3) Notwithstanding the provisions of paragraph (2) of this Article, dividends paid by a company which is a resident of Ireland to a company which is a resident of Sweden shall be exempt from Swedish tax to the extent that the dividends would have been exempt from Swedish tax if both companies had been Swedish companies. This provision however is only applicable if:

(a) the profits out of which the dividends are paid have been subjected to the normal corporate tax in Ireland or a tax comparable to the Swedish corporate tax in Ireland or elsewhere; or

(b) the dividends paid by the company which is a resident of Ireland consist wholly or almost wholly of dividends which that company has received in respect of shares held by it in a company which is a resident in a third state and which would have been exempt from Swedish tax if the shares in respect of which they are paid had been held directly by the company which is a resident of Sweden."

(3) Paragraph (5) of Article 24 shall be re-numbered paragraph (4) and amended by the deletion of the following:

"or shall be exempt from Swedish tax in accordance with paragraph (3) of this Article".

(4) Paragraphs (6) and (7) of Article 24 shall be re-numbered paragraphs (5) and (6), respectively.

(5) Subparagraph (a) of paragraph (8) of Article 24 shall be re-numbered paragraph (7), the reference to paragraph (4) in that subparagraph shall be amended to paragraph (3) and subparagraphs (b) and (c) of paragraph (8) shall be deleted.

(6) The following paragraph shall be inserted after paragraph 7:

"(8) (a) Where under the provisions of Chapter VI of Part I of the Finance Act, 1980 , (as those provisions may be amended from time to time without changing the general principle thereof) the profits of a company were relieved from Irish tax, then—

(i) for the purposes of paragraph (2), in the case of income which may be taxed in Ireland in accordance with the provisions of Article 8, the reference in that paragraph to "an amount equal to the Irish tax paid in respect of such income" shall have effect as if the Irish tax paid were an amount equal to one half of the Swedish tax payable on that income,

(ii) for the purposes of paragraph (3), the reference to "the normal corporate tax in Ireland" shall be deemed to include the tax chargeable under those provisions,

(iii) for the purposes of paragraph (7), if the recipient of a dividend out of those profits, if he were a resident of Ireland, would be entitled to a reduced tax credit in respect of the dividend, the amount to be allowed as a deduction under that paragraph shall be deemed to be an amount arrived at by applying to the gross aggregate amount referred to in that paragraph a rate per cent equal to three-fifths of the Swedish tax rate applicable to that gross aggregate amount.

(b) Notwithstanding anything in subparagraph (a), where the profits of a company relieved from Irish tax under the provisions referred to in that subparagraph are profits from the carrying on by that company of financial services activities, this paragraph shall not apply to such profits, or to any dividends paid out of such profits, unless the competent authorities, having consulted each other, agree that the activities are such that this paragraph shall apply to profits from those activities and to any dividends paid out of those profits.

(c) The paragraph shall not have effect in relation to profits arising after 31 December, 2000, or to dividends paid out of such profits.

Provided that the competent authorities may, at the request of either competent authority (made not later than 30 June, 1997), review the scope and application of this paragraph and, if it appears to either or both of them—

(i) that the paragraph should be renegotiated, such renegotiation shall be entered into immediately,
or

(ii) that the date (31 December, 2000) should be changed, the date shall be changed to such date (not being earlier than 31 December, 1997) as may be agreed by the exchange of written notice through diplomatic channels."

ARTICLE 3

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

(2) This Protocol shall enter into force immediately after the expiration of thirty days following the date of the later of these notifications and shall thereupon have effect.

ARTICLE 4

Notwithstanding the preceding Articles of this Protocol, income and dividends accruing to a resident of Sweden out of profits which are derived before the entry into force of this Protocol by a company resident in Ireland or by a permanent establishment in Ireland of that resident of Sweden will, up to and including 31 December, 1994, be entitled to the same exemptions and reliefs to which they would have been entitled under the Convention between Ireland and Sweden for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains signed in Stockholm on 8 October, 1986, if this Protocol had not entered into force.

However, the provisions of this Article shall not apply where the profits of the company resident in Ireland or of the permanent establishment in Ireland are profits from the carrying on by that company or permanent establishment of a financial services activity in Ireland, unless the competent authorities agree that subparagraph (a) of paragraph (8) of Article 24 of the said Convention, as amended by this Protocol, would, whether or not the company or the permanent establishment has stopped trading, apply if the activities have been carried out after the entry into force of this Protocol to profits from that activity or to dividends paid out of them.

ARTICLE 5

This Protocol shall cease to have effect at such time as the Convention ceases to have effect in accordance with Article 31 of the Convention.

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

Done at Dublin this 1st day of July, 1993 in duplicate in the English language.