STATUTORY INSTRUMENTS

2018 No. 630

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX

The Double Taxation Relief (Base Erosion and Profit Shifting) Order 2018

Made - - - - 23rd May 2018

At the Court at Buckingham Palace, the 23rd day of May 2018

Present,

The Queen's Most Excellent Majesty in Council

A draft of this Order was laid before the House of Commons in accordance with section 5(2) of the Taxation (International and Other Provisions) Act 2010(**1**) and approved by resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief (Base Erosion and Profit Shifting) Order 2018.

Double taxation and international enforcement arrangements to have effect

2. It is declared that—

(a) The arrangements specified in the Convention set out in the Schedule to this Order have been made;

(b) The arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax and income tax and taxes of a similar character imposed by the laws of territories outside of the United Kingdom; and

(c) It is expedient that those arrangements should have effect.

(**1**) 2010 c.8.

Ceri King
Deputy Clerk of the Privy Council

SCHEDULE Article 2

MULTILATERAL CONVENTION

TO IMPLEMENT TAX TREATY RELATED MEASURES

TO PREVENT BASE EROSION AND PROFIT SHIFTING

The Parties to this Convention,

Recognising that governments lose substantial corporate tax revenue because of aggressive international tax planning that has the effect of artificially shifting profits to locations where are subject to non-taxation or reduced taxation;

Mindful that base erosion and profit shifting (hereinafter referred to as "BEPS") is a pressing not only for industrialised countries but also for emerging economies and developing countr

Recognising the importance of ensuring that profits are taxed where substantive economic activities generating the profits are carried out and where value is created;

Welcoming the package of measures developed under the OECD/G20 BEPS project (herein referred to as the "OECD/G20 BEPS package");

Noting that the OECD/G20 BEPS package included tax treaty-related measures to address c hybrid mismatch arrangements, prevent treaty abuse, address artificial avoidance of permane establishment status, and improve dispute resolution;

Conscious of the need to ensure swift, co-ordinated and consistent implementation of the tre related BEPS measures in a multilateral context;

Noting the need to ensure that existing agreements for the avoidance of double taxation on i are interpreted to eliminate double taxation with respect to the taxes covered by those agreer without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provi those agreements for the indirect benefit of residents of third jurisdictions);

Recognising the need for an effective mechanism to implement agreed changes in a synchro and efficient manner across the network of existing agreements for the avoidance of double taxation on income without the need to bilaterally renegotiate each such agreement;

Have agreed as follows:

Part I.
Scope and Interpretation of Terms

Article 1

This Convention modifies all Covered Tax Agreements as defined in subparagraph a) of par 1 of Article 2 (Interpretation of Terms).

Article 2

Interpretation of Terms

1. For the purpose of this Convention, the following definitions apply:

a) The term "Covered Tax Agreement" means an agreement for the avoidance of doub taxation with respect to taxes on income (whether or not other taxes are also covere

i) that is in force between two or more:

A) Parties; and/or

B) jurisdictions or territories which are parties to an agreement described above and fo whose international relations a Party is responsible; and

ii) with respect to which each such Party has made a notification to the Depositary listing the agreement as well as any amending or accompanying instruments th (identified by title, names of the parties, date of signature, and, if applicable at time of the notification, date of entry into force) as an agreement which it wish be covered by this Convention.

b) The term "Party" means:

i) A State for which this Convention is in force pursuant to Article 34 (Entry into Force); or

ii) A jurisdiction which has signed this Convention pursuant to subparagraph b) o paragraph 1 of Article 27 (Signature and Ratification, Acceptance or Approval) for which this Convention is in force pursuant to Article 34 (Entry into Force).

c) The term "Contracting Jurisdiction" means a party to a Covered Tax Agreement.

d) The term "Signatory" means a State or jurisdiction which has signed this Conventio for which the Convention is not yet in force.

2. As regards the application of this Convention at any time by a Party, any term not d herein shall, unless the context otherwise requires, have the meaning that it has at that time the relevant Covered Tax Agreement.

Part II.
Hybrid Mismatches

Article 3

Transparent Entities

1. For the purposes of a Covered Tax Agreement, income derived by or through an en arrangement that is treated as wholly or partly fiscally transparent under the tax law of eithe Contracting Jurisdiction shall be considered to be income of a resident of a Contracting Jurisdiction but only to the extent that the income is treated, for purposes of taxation by that Contracting Jurisdiction, as the income of a resident of that Contracting Jurisdiction.

2. Provisions of a Covered Tax Agreement that require a Contracting Jurisdiction to e from income tax or provide a deduction or credit equal to the income tax paid with respect t income derived by a resident of that Contracting Jurisdiction which may be taxed in the othe Contracting Jurisdiction according to the provisions of the Covered Tax Agreement shall no to the extent that such provisions allow taxation by that other Contracting Jurisdiction solely because the income is also income derived by a resident of that other Contracting Jurisdictio

3. With respect to Covered Tax Agreements for which one or more Parties has made t reservation described in subparagraph a) of paragraph 3 of Article 11 (Application of Tax Agreements to Restrict a Party's Right to Tax its Own Residents), the following sentence wi added at the end of paragraph 1: "In no case shall the provisions of this paragraph be constru affect a Contracting Jurisdiction's right to tax the residents of that Contracting Jurisdiction."

4. Paragraph 1 (as it may be modified by paragraph 3) shall apply in place of or in the absence of provisions of a Covered Tax Agreement to the extent that they address whether i derived by or through entities or arrangements that are treated as fiscally transparent under t law of either Contracting Jurisdiction (whether through a general rule or by identifying in de the treatment of specific fact patterns and types of entities or arrangements) shall be treated income of a resident of a Contracting Jurisdiction.

5. A Party may reserve the right:

a) for the entirety of this Article not to apply to its Covered Tax Agreements;

b) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4;

c) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which denies treaty benefits in the case of incom derived by or through an entity or arrangement established in a third jurisdiction;

d) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specifi patterns and types of entities or arrangements;

e) for paragraph 1 not to apply to its Covered Tax Agreements that already contain a provision described in paragraph 4 which identifies in detail the treatment of specifi patterns and types of entities or arrangements and denies treaty benefits in the case