STATUTORY INSTRUMENTS

2016 No. 1217

CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Turkmenistan) Order 2016

Made - - - - 14th December 2016

At the Court at Buckingham Palace, the 14th day of December 2016

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 section 173(7) of the Finance Act 2006(**2**) and approved by a resolution of that House.

Accordingly, Her Majesty, in exercising the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and section 173(1) to (3) of the Finance Act 2006, by and with the advice of Her Privy Council, orders as follows—

Citation

1. This Order may be cited as the Double Taxation Relief and International Tax Enforcement (Turkmenistan) Order 2016.

Double taxation and international tax 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 with the Government of Turkmenistan,

(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

(**1**) 2010 c. 8
(**2**) 2006 c. 25

imposed by the laws of Turkmenistan and for the purposes of assisting international tax enforcement, and

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

Ceri King
Deputy Clerk of the Privy Council

SCHEDULE Article 2

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF TURKMENISTAN FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND ON CAPITAL GAINS

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

Desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains;

Have agreed as follows:

ARTICLE 1

Persons Covered

This Convention shall apply to persons who are residents of one or both of the Contracting States.

ARTICLE 2

Taxes Covered

1. This Convention shall apply to taxes on income and on capital imposed on behalf of a Contracting State or of its administrative subdivisions or local authorities, irrespective of the manner in which they are levied.

2. There shall be regarded as taxes on income and on capital all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, taxes on the total amount of wages or salaries paid by enterprises, as well as taxes on capital appreciation

3. The existing taxes to which the Convention shall apply are in particular:

a) in Turkmenistan:

i) the tax on profits (income) of juridical persons;

ii) the tax on income of individuals;

(hereinafter referred to as "Turkmen tax");

b) in the United Kingdom:

i) the income tax;

ii) the corporation tax;

ii) the capital gains tax;

(hereinafter referred to as "United Kingdom tax").

4. The Convention shall apply also to any identical or substantially similar taxes that are imposed 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 significant changes that have been made in their taxation laws.

ARTICLE 3

General Definitions

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

a) the term "Turkmenistan" means the territory of Turkmenistan comprised within its land borders together with the maritime zones (including both marine and sub-marine zones) over which Turkmenistan exercises sovereign or jurisdictional rights under international law;

b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised;

c) the terms "a Contracting State" and "the other Contracting State" mean Turkmenistan or the United Kingdom, as the context requires;

d) the term "person" includes an individual, a company and any other body of persons;

e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

f) the term "enterprise" applies to the carrying on of any business;

g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

h) the term "international traffic" means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a Contracting State of which the enterprise that operates the ship or aircraft is not a resident;

i) the term "competent authority" means:

(i) in Turkmenistan, the Ministry of Finance and the Main State Tax Service or their authorised representative;

(ii) in the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;

j) the term "national" means:

(i) in relation to Turkmenistan any individual possessing the nationality or citizenship of Turkmenistan; and any legal person, partnership or association deriving its status as such from the laws in force in Turkmenistan;

(ii) 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 or association deriving its status as such from the laws in force in the United Kingdom;

k) the term "business" includes the performance of professional services and of other activities of an independent character.

l) the term "pension scheme" means any scheme or other arrangement established in a Contracting State which:

(i) is generally exempt from income taxation in that State; and

(ii) operates to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements

2. As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which this Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

ARTICLE 4

Resident

1. For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any administrative subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State or capital situated therein.

2. The term "resident of a Contracting State" includes:

a) a pension scheme established in that State; and

b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

3. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows: