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STATUTORY INSTRUMENTS

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**2014 No. 3274**

**CAPITAL GAINS TAX  
CORPORATION TAX  
INCOME TAX  
PETROLEUM REVENUE TAX**

**The Double Taxation Relief and International  
Tax Enforcement (Canada) Order 2014**

*Made - - - - 10th December 2014*

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<sup>(1)</sup> and section 173(7) of the Finance Act 2006<sup>(2)</sup> 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 (Canada) Order 2014.

**Double taxation and international tax enforcement arrangements to have effect**

2. It is declared that—

- (a) the arrangements specified in the Protocol set out in Part 1 of the Schedule to this Order and in the Interpretative Protocol set out in Part 2 of that Schedule, which further vary the arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) Order 1980<sup>(3)</sup>, have been made with the Government of Canada.
- (b) the arrangements have been made with a view to affording relief from double taxation in relation to capital gains tax, corporation tax, income tax and petroleum revenue tax and

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(1) 2010 c. 8.

(2) 2006 c. 25.

(3) S.I. 1980/709; the arrangements scheduled to that Order were amended by the arrangements set out in the Schedules to S.I. 1980/1528, S.I. 1985/1996, and S.I. 2003/2619.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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taxes of a similar character imposed by the laws of Canada and for the purposes of assisting international tax enforcement; and

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

*Richard Tilbrook*  
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

**PROTOCOL AMENDING THE CONVENTION BETWEEN THE  
GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND  
NORTHERN IRELAND AND THE GOVERNMENT OF CANADA FOR THE  
AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF  
FISCAL EVASION WITH RESPECT TO INCOME AND CAPITAL GAINS,  
SIGNED AT LONDON ON 8th MAY 1980, AS AMENDED BY THE  
PROTOCOL SIGNED AT OTTAWA ON 15th APRIL 1980, BY THE  
PROTOCOL SIGNED AT LONDON ON 7th MAY 1985 AND BY THE  
PROTOCOL SIGNED AT LONDON ON 7th MAY 2000**

**THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN  
AND NORTHERN IRELAND AND THE GOVERNMENT OF CANADA**

**DESIRING** to conclude a protocol to amend further the Convention between the Government of Canada and the Government of 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 gains, signed at London on 8th May 1980, as amended by the Protocol signed at Ottawa on 15th April 1980, by the Protocol signed at London on 7th May 1985 and by the Protocol signed at London on 7th May 2000 (the “Convention”);

**HAVE AGREED** as follows:

**ARTICLE 1**

Paragraph 1 of Article 4 of the Convention shall be deleted.

- “1. For the purposes of this Convention, the term “resident” means any person who, under the laws of that State, is liable to tax in that State on his domicile, residence, place of management, place of incorporation or criterion of a similar nature. This term also includes any person who is a subdivision or local authority thereof, or any agent or member of a subdivision or local authority. But this term does not include a person who is liable to tax in that Contracting State in respect only of income derived from that State.

### **ARTICLE III**

Article 7 of the Convention shall be deleted and replaced by the following:

### **“ARTICLE 7**

#### **Business Profits**

1. Profits of an enterprise of a Contracting State shall be taxable in that State if the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business in the other Contracting State through a permanent establishment, profits that are attributable to the permanent establishment shall be taxable in that other Contracting State. The provisions of paragraph 2 may be taxed in that other Contracting State.
2. For the purposes of this Article and Article 21, the Contracting State to which the profits are attributable shall be the Contracting State to the permanent establishment in which the profits it might be expected to make, in particular in the case of a permanent establishment of the enterprise, if it were a separate and independent entity, carrying on similar activities under the same or similar conditions, having in mind the functions performed, assets used and risks assumed.

## ARTICLE V

Paragraphs 3 and 4 of Article 9 of the Convention following:

- “3. A Contracting State shall not make a primary residence in the Contracting State of an enterprise in the circumstances referred to in paragraph 2, within the limits provided in its domestic laws and, in the taxable year in which the profits which would, but for the conditions referred to in paragraph 2, be attributable to the enterprise.
4. The provisions of paragraphs 2 and 3 shall not apply in the case of a default or where a person’s obligations have arisen as a result of deliberate behaviour.”

## ARTICLE VI

1. The following paragraphs shall be inserted after paragraph 1 of Article 9 of the Convention:

- “3. Notwithstanding the provisions of paragraph 1, the profits of an enterprise of a Contracting State and beneficially owned by an organisation of persons resident in the other Contracting State exclusively to or for the benefit of one or more recognized pension plans shall be exempt from tax in the Contracting State if:

- (a) the organisation is the beneficial owner of the shares, has not received any dividend paid, holds those shares as an investment and is not a resident of the other State;

Article 11 of the Convention shall be deleted and replaced

## **“ARTICLE 11**

### **Interest**

1. Interest arising in a Contracting State and paid to a resident of another Contracting State may be taxed in that other State.
2. However, such interest may also be taxed in the Contracting State of which the beneficiary is a resident and according to the laws of that State, but if the beneficiary is a resident of the other Contracting State, the tax so charged shall not exceed a certain percentage of the gross amount of the interest.
3. Notwithstanding the provisions of paragraph 2
  - (a) interest arising in the United Kingdom and paid to a resident of Canada shall be taxable only in Canada if it is paid in respect of a loan or a credit extended, guaranteed or insured by Export Credits Guarantee Department;
  - (b) interest arising in Canada and paid to a resident of the United Kingdom shall be taxable only in the United Kingdom if it is paid in respect of a loan or insured, or a credit extended, guaranteed or insured by Export Credits Guarantee Department; and
  - (c) interest arising in a Contracting State and paid to a resident of another Contracting State shall not be taxable in the first-mentioned Contracting State if the owner of the interest is a resident of the other Contracting State for a certain period of time as determined by the arm's length with the payer.

establishment or fixed base, then such interest shall be taxable in the State in which the permanent establishment or fixed base is situated.

8. Where, by reason of a special relationship between the donor and the donee or between both of them and some other person, the amount of the interest for whatever reason the amount which would otherwise be payable to the beneficial owner in the absence of such relationship shall apply only to the last-mentioned amount, the interest payments shall remain taxable according to the provisions of the Convention in regard being had to the other provisions of the Convention.
9. The provisions of this Article shall not apply to interest payments for the main purposes of any person concerned with the interest, in respect of which a claim in respect of which the interest is paid is made, by means of that creation or assignment.”

## **ARTICLE VI**

1. Paragraph 2 of Article 12 of the Convention shall apply to the following:

- “2. However, such royalties may be taxed in the State of the residence of the resident of the other Contracting State, the tax to be levied shall be a percentage of the gross amount of the royalties.”

2. In subparagraph (a) of paragraph 3 of Article 12 of the Convention, the words “payments in respect of motion pictures and works on film” shall be replaced by the words “payments in respect of motion pictures and works on film reproduction for use in connection with television broadcasting” (other than payments in respect of motion pictures, and

The amended paragraph shall therefore read as follows:

“2. Notwithstanding the provisions of paragraph 1, remuneration received by an individual in a Contracting State in respect of an employment exercised in that State shall be taxable only in the first-mentioned State if:

(a) the recipient is present in the other State for a period not exceeding the aggregate 183 days in any 12 month period commencing on the first day of the year concerned, and

(b) the remuneration is paid by, or on behalf of, an employer who is resident in the other State, and

(c) the remuneration is not borne by a permanent establishment which the employer has in the other State.”

2. Paragraph 3 of Article 15 of the Convention shall read as follows:

“3. Notwithstanding the preceding provisions of this Article, remuneration received by an individual in respect of an employment exercised aboard a ship or aircraft in international traffic by an enterprise of a Contracting State shall be taxable only in that State if:

3. Paragraph 5 of Article 15 of the Convention shall read as follows:

## **ARTICLE X**

Paragraph 3 of Article 18 of the Convention shall read as follows:

## **ARTICLE X**



- (d) in the case of a dividend not exempted from tax in the country in which it is paid by a company which is a resident of a Contracting State which is a resident of the United Kingdom and in which the recipient is indirectly at least 10 per cent of the voting power, the credit mentioned in subparagraph 1 of paragraph 1 of Article 10 shall account the Canadian tax payable by the company in the country of which such dividend is paid.”

## **ARTICLE XII**

Article 23 of the Convention shall be deleted and replaced by:

## **“ARTICLE 23**

### **Mutual Agreement Procedure**

1. Where a person considers that the actions of one or both Contracting States result or will result for that person in taxation not in accordance with the provisions of this Convention, that person may, irrespective of the provisions of the domestic law of those States, address to the competent authority of the Contracting State of which that person is a resident an application for claiming the revision of such taxation. To be admissible, the application must be submitted within three years from the first notification of the taxation not in accordance with the provisions of this Convention.
2. The competent authority referred to in paragraph 1 shall, if it appears to it to be justified and if it is not itself able to resolve the case by mutual agreement with the other Contracting State, with a view to the avoidance of double taxation, with this Convention. Any agreement reached shall be notified to the other Contracting State.

- (a) under paragraph 1, a person has presented a claim of a Contracting State on the basis that the actions of the Contracting States have resulted for that person in a dispute with the provisions of this Convention, and
- (b) the competent authorities are unable to reach a decision in the case pursuant to paragraph 2 within a period of 18 months, which the information necessary to undertake the case and a mutual agreement has been received by both States, or other period from that date as is agreed by both States.

any unresolved issues arising from the case shall be referred to arbitration shall be conducted in the manner prescribed in paragraph 3 agreed upon by the Contracting States through an exchange of diplomatic notes. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court of competent jurisdiction in either State. Unless a person whose taxation is directly affected by that decision does not accept that decision, the decision shall be final and shall constitute a resolution by mutual agreement.

7. The provisions of paragraph 6 shall apply only with respect to the provisions of Article 4 (but only insofar as the issue relates to the provisions of Article 5, Article 7, Article 9, Article 12 (but only insofar as it relates to) in transactions involving related persons to which Article 10 and any other Articles subsequently agreed by the Contracting States apply, and any other Articles subsequently agreed by the Contracting States through an exchange of diplomatic notes.”

### **ARTICLE XIII**

Article 24 of the Convention shall be deleted and replaced by the following:

- (a) to carry out administrative measures at va  
administrative practice of that or of the ot
  - (b) to supply information which is not obtain  
course of the administration of that or of t
  - (c) to supply information which would disclo  
commercial or professional secret or trade  
disclosure of which would be contrary to
4. If information is requested by a Contracting State  
other Contracting State shall use its information g  
requested information, even though that other Stat  
for its own tax purposes. The obligation contained  
subject to the limitations of paragraph 3 but in no  
construed to permit a Contracting State to decline  
because it has no domestic interest in such inform
  5. In no case shall the provisions of paragraph 3 be c  
State to decline to supply information solely becau  
bank, other financial institution, nominee or perso  
capacity or because the information relates to own
  6. Authorized representatives of a Contracting State  
Contracting State to interview individuals or exam  
with their consent, in accordance with procedures  
competent authorities.”

priority applicable to a revenue claim under nature as such. In addition, a revenue claim purposes of paragraph 3 shall not, in that State, a revenue claim under the laws of the other Contracting State.

5. Proceedings with respect to the existence, validity or amount of a revenue claim of a Contracting State shall not be brought before the courts of the other Contracting State.
6. Where, at any time after a request has been made under paragraph 3 and before the other Contracting State has made a relevant revenue claim to the first-mentioned State, it appears to be a revenue claim of the first-mentioned State and is owed by a person who, a Contracting State, prevent its collection, the competent authority of that State shall promptly notify the competent authority of the other State, the first-mentioned State, of the option of the other State, the first-mentioned State, to make its request.
7. In no case shall the provisions of this Article be interpreted as imposing on a Contracting State the obligation:
  - (a) to carry out administrative measures which are not in accordance with administrative practice of that or of any other Contracting State;
  - (b) to carry out measures which would be contrary to the public interest of the public);
  - (c) to provide assistance if the other Contracting State has taken reasonable measures of collection and enforcement.

(a) in Canada:

- (i) in respect of tax withheld at the source from payments to residents on or after the first day of January following the date that this Protocol enters into force;
- (ii) in respect of other Canadian tax, for the period beginning on the first day of January in the calendar year in which this Protocol enters into force;

(b) in the United Kingdom:

- (i) in respect of tax withheld at the source from payments to residents on or after the first day of January following the date that this Protocol enters into force;
- (ii) in respect of income tax and capital gains tax, for the period beginning on or after 6th April next following the date that this Protocol enters into force; and
- (iii) in respect of corporation tax, for the period beginning on 1st April next following the date that this Protocol enters into force;

2. Notwithstanding the provisions of paragraph 1, (Exchange of information and agreement procedure), Article 24 (Exchange of information and collection of taxes) of the Convention, introduced by Article 24 shall have effect from the date of entry into force of this Protocol for the period to which the matters relate. However, paragraphs 1 and 2 (Exchange of information and agreement procedure) of the Convention introduced by Article XII shall have effect from the date specified through an exchange of diplomatic notes,

## PART 2

**INTERPRETATIVE P**

At the signing of the Protocol amending the *Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the State of New Jersey of double taxation and the prevention of fiscal evasion with respect to taxes on income, profits and gains*, signed at London on 8th September 1978, as amended by the Protocol signed at London on 15th April 1980, by the Protocol signed at London on 15th April 1980, and the Protocol signed at London on 7th May 2003 (hereinafter referred to as the "Convention"), the Contracting States have agreed upon the following provisions which shall form an integral part of the Convention:

1. In relation to the application of the Convention to Partnerships:

It is understood that for the purpose of providing relief in respect of income or gains derived by or through a partnership which is established under the laws of the United Kingdom and is managed in the United Kingdom, and is subject to the tax laws of the United Kingdom, the income or gains of the members of the Limited Partnership shall, to the extent that the income or gains are treated, for the purposes of the tax laws of the United Kingdom, as the income or gains of a resident of the United Kingdom, shall the provisions of this paragraph be construed as preserving the Contracting State's right to tax the residents of the Contracting States may consult to determine the residence of the members of the partnership.

2. In relation to paragraph 1 of Article 4 of the Convention:

It is understood that the word "instrumental" shall be construed as meaning "owned, directly or indirectly, by a Contracting State".

**FOR THE GOVERNMENT OF  
THE UNITED KINGDOM OF  
GREAT BRITAIN AND  
NORTHERN IRELAND**

David Gauke

**FOR  
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**EXPLANATORY NOTE**

*(This note is not part of the Order)*

Part 1 of the Schedule to this Order contains a Protocol (“the amending Protocol”) which further amends a convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Canada (“the Convention”). Part 2 of the Schedule to this Order contains an Interpretative Protocol which clarifies the intended interpretation of particular aspects of the amending Protocol.

The Convention was scheduled to the Double Taxation Relief (Taxes on Income) (Canada) Order 1980 (S.I. 1980/709) and has previously been amended by the arrangements set out in the Schedules to the Double Taxation Relief (Taxes on Income) (Canada) (No. 2) Order 1980 (S.I. 1980/1528), and the Double Taxation Relief (Taxes on Income) Canada Orders of 1985 (S.I. 1985/1996) and 2003 (S.I. 2003/2619).

The Convention aims to eliminate the double taxation of income and gains arising in one country and paid to residents of the other country. This is done by allocating the taxing rights that each country has under its domestic law over the same income and gains, and/or by providing relief from double taxation. There are also specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement. The amending Protocol continues this approach.

Article 2 makes a declaration that it is expedient that the amending Protocol and Interpretative Protocol should have effect. Amendments are made to Articles of the Convention relating to business profits, shipping and air transport, associated enterprises, dividends, interest, royalties, dependent personal services, government service, elimination of double taxation, exchange of information and the mutual agreement procedure. The general definitions Article is also amended to extend the meaning of “person” in the Convention to include partnerships, and the meaning of “resident of a Contracting State” is amended. An Article on assistance in the collection of taxes is added to the Convention.

The amending Protocol to the Order will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It will take effect in each country as follows:

- (a) in the United Kingdom:
  - (i) in respect of tax withheld at source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following the date on which the amending Protocol enters into force;
  - (ii) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date on which the amending Protocol enters into force; and
  - (iii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which the amending Protocol enters into force;
- (b) in Canada:
  - (i) in respect of tax withheld at source, on amounts paid or credited to non-residents on or after the first day of January in the calendar year next following the date on which the amending Protocol enters into force; and
  - (ii) in respect of other Canadian tax, for taxation years beginning on or after the first day of January in the calendar year next following the date on which the amending Protocol enters into force.

The date of entry into force will in due course be published in the *London, Edinburgh and Belfast Gazettes*.

A Tax Information and Impact Note has not been produced for this Order as it gives effect to a previously announced policy to enact a double taxation agreement.