
STATUTORY INSTRUMENTS

2014 No. 3275

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX**

**The Double Taxation Relief and International
Tax Enforcement (Tajikistan) 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⁽¹⁾ and section 173(7) of the Finance Act 2006⁽²⁾ and approved by a 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 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 (Tajikistan) Order 2014.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—
- (a) the arrangements specified in the Agreement and Protocol set out in the Schedule to this Order have been made with the Government of the Republic of Tajikistan;
 - (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 the Republic of Tajikistan and for the purposes of assisting international tax enforcement; and
 - (c) it is expedient that those arrangements should have effect.

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

Status: This is the original version (as it was originally made).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

Richard Tilbrook
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

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

The United Kingdom of Great Britain and Northern Ireland

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital

Have agreed as follows:

ARTICLE 1

Persons Covered

This Agreement shall apply to persons who are residents

ARTICLE 2

Taxes Covered

1. This Agreement shall apply to taxes on income and on capital gains levied in the Contracting State or of its political or administrative territory.

- i) the income tax;
- ii) the corporation tax; and
- iii) the capital gains tax;

(hereinafter referred to as “United Kingdom tax

4. The Agreement shall apply also to any identical taxes imposed after the date of signature of the Agreement in a Contracting State. The competent authorities of the Contracting States shall make any substantial changes that have been made in their taxation laws

ARTICLE 3

General Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
 - a) the term “Tajikistan” means the Republic of Tajikistan, in its geographical sense, includes its territory, the continental shelf and the exclusive economic zone over which the Republic of Tajikistan exercises its jurisdiction, including the rights on exploration and exploitation in accordance with international law and where such rights apply;
 - b) the term “United Kingdom” means Great Britain, Northern Ireland and any area outside the territorial sea of the United Kingdom concerning the Continental Shelf and in relation to which the United Kingdom has jurisdiction in accordance with international law and where such rights apply;

- (i) in Tajikistan, the Ministry of Finance;
 - (ii) in the United Kingdom, the Commissioners of Customs or their authorised representatives;
- j) the term “national” means:
 - (i) in relation to Tajikistan, any individual citizen of Tajikistan; and any legal person, partnership or association as such from the laws in force in Tajikistan;
 - (ii) in relation to the United Kingdom, any individual not possessing the citizenship of any other country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership or association as such from the laws in force in the United Kingdom;
- k) the term “business” includes the performance of any trade or activities of an independent character;
- l) the term “pension scheme” means any scheme or arrangement which:
 - i) is generally exempt from income tax;
 - (ii) operates to administer or provide payments of income for the benefit of one or more persons;

2. As regards the application of the Agreement at a time when the law is not defined therein shall, unless the context otherwise requires, be the law in force at that time under the law of that State for the purposes of the tax laws of that State.

- b) if the State in which he has his centre of v
he does not have a permanent home avail
deemed to be a resident only of the State
- c) if he has an habitual abode in both States
to be a resident only of the State of which
- d) if he is a national of both States or of neit
the Contracting States shall settle the que

3. Where by reason of the provisions of paragraph
resident of both Contracting States, then the competent a
endeavour to determine by mutual agreement the Contra
deemed to be a resident for the purposes of this Agreeme
by the competent authorities of the Contracting States, th
resident of either Contracting State for the purposes of c
Agreement, except those provided by Articles 21, 22 and

ARTICLE 5

Permanent Establish

1. For the purposes of this Agreement, the term “p
place of business through which the business of an enter
2. The term “permanent establishment” includes e
 - a) a place of management;
 - b) a branch;

- d) the maintenance of a fixed place of business for the storage of goods or merchandise, or of collecting income for the enterprise,
- e) the maintenance of a fixed place of business for the enterprise, any other activity of a permanent character,
- f) the maintenance of a fixed place of business for the activities mentioned in sub-paragraphs a) and b), or the fixed place of business resulting from the activities of an auxiliary character.

5. Notwithstanding the provisions of paragraphs 1 and 2, an agent of an independent status to whom paragraph 6 applies and has, and habitually exercises, in a Contracting State a fixed place of business on behalf of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes in that State if such activities are limited to those mentioned in paragraph 1 and if a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through an agent or any other agent of an independent status, provided that such agent carries on his ordinary course of their business.

7. The fact that a company which is a resident of a Contracting State is controlled or managed by a company which is a resident of the other Contracting State shall not make that other State (whether through a permanent establishment or otherwise) a permanent establishment of the first-mentioned company if that other State (whether through a permanent establishment or otherwise) constitute either company a permanent establishment of the first-mentioned company.

ARTICLE 7

Business Profits

1. The profits of an enterprise of a Contracting State which carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as a contractor, it shall be taxed in the other State but only so much of them as is attributable to that establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment therein, there shall in each Contracting State be attributed to that establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed deductions expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses incurred in the permanent establishment is situated or elsewhere.

4. Insofar as it has been customary in a Contracting State to attribute profits to a permanent establishment on the basis of an apportionment of the profits of an enterprise to its various parts, nothing in paragraph 2 shall prevent the Contracting State from determining the profits to be taxed by such an apportionment. Any apportionment adopted shall, however, be such that the result is in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment in a Contracting State which is not situated in that State.

where such rental or such use, maintenance or rental, operation of ships or aircraft in international traffic.

3. The provisions of paragraphs 1 and 2 shall also pool, a joint business or an international operating agency.

ARTICLE 9

Associated Enterprises

1. Where
 - a) an enterprise of a Contracting State participates in the management, control or capital of an enterprise of another Contracting State,
 - b) the same persons participate directly or indirectly in the capital of an enterprise of a Contracting State and in the capital of another Contracting State,

and in either case conditions are made or imposed between the two enterprises which differ from those which would exist between enterprises, then any profits which would, but for those conditions, be attributable to the enterprise of the first-mentioned State, but, by reason of those conditions, have not been so attributed, shall nevertheless be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting State includes in the profits of an enterprise of the other Contracting State profits on which an enterprise of the first-mentioned State includes in the profits of that other State and the profits so included are profits of an enterprise of the first-mentioned State if the conditions mentioned in paragraph 1 are satisfied, the profits so included shall nevertheless be included in the profits of that enterprise and taxed accordingly.

3. Notwithstanding the provisions of paragraph 2, (gains) derived directly or indirectly from immovable property of an investment vehicle that is a resident of a Contracting State and which property is exempt from tax and which distributes most of its income in that State and according to the laws of that State, but if the vehicle is a resident of the other Contracting State, the tax so charged shall be on the gross amount of the dividends other than where the beneficiary is a resident of a scheme established in the other Contracting State, where paragraph 2 shall apply.

This paragraph and paragraph 2 shall not affect the tax on the profits out of which the dividends are paid.

4. The term “dividends” as used in this Article means dividends on shares or “jouissance” rights, mining shares, founders shares, participating in profits, as well as any other item which is taxable under the taxation laws of the State of which the company making the payment is a resident.

5. The provisions of paragraphs 1, 2 and 3 shall not apply to dividends, being a resident of a Contracting State, carried to a Contracting State of which the company paying the dividends is a resident and which is situated therein and the holding in respect of which the dividends are paid is with such permanent establishment. In such case the provisions of paragraph 2 shall apply.

6. Where a company which is a resident of a Contracting State is a resident of the other Contracting State, that other State may not tax the dividends of the company, except insofar as such dividends are paid to a resident of that other State as the holding in respect of which the dividends are paid is situated in that other State, nor subject the dividends to tax on undistributed profits, even if the dividends paid or the profits

- a) the beneficial owner of the interest is that bank, a political or administrative territory
- b) the interest is paid by the State in which the administrative territorial subdivision or local authority
- c) the interest is paid in respect of a loan, debt insured by that other State or by a political local authority or export financing agency
- d) the beneficial owner of the interest is a bank
- e) the beneficial owner of the interest is a person who is not derived from the carrying on of a business or an associated enterprise.

4. The term “interest” as used in this Article means whether or not secured by mortgage and whether or not on debtor’s profits, and in particular, income from government debentures, including premiums and prizes attaching to such debentures. Penalty charges for late payment shall not be regarded as interest. The term shall not include any item which is treated as a dividend.

5. The provisions of paragraph 1, 2 and 3 shall not apply to interest, being a resident of a Contracting State, carries on a business in which the interest arises through a permanent establishment in respect of which the interest is paid is effectively connected with that business. In such case the provisions of Article 7 shall apply.

ARTICLE 11

Royalties

1. Royalties arising in a Contracting State and beneficially owned by a resident of another Contracting State may be taxed in that other State.

2. However, such royalties may also be taxed in the Contracting State of which the beneficial owner is a resident and according to the laws of that State, but if the beneficial owner is also a resident of the other Contracting State, the tax so charged shall not exceed the tax charged in the first-mentioned State on the royalties.

The competent authorities of the Contracting States shall endeavour to secure the application of this limitation.

3. The term “royalties” as used in this Article means payments made in consideration for the use of, or the right to use, any copyright in literary, artistic or scientific works, including cinematograph films, any patent, trade mark, design or model, or process, or for information (know-how) concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 shall not apply to payments made for royalties, being a resident of a Contracting State, carries on an industrial, commercial or scientific activity in which the royalties arise through a permanent establishment of which the royalties are paid is effectively connected with that activity. In such case the provisions of Article 7 shall apply.

5. Royalties shall be deemed to arise in a Contracting State in which the person paying them is a resident of that Contracting State. Where, however, the person paying them is not a resident of a Contracting State or not, has in a Contracting State a permanent establishment of which the royalties are paid is effectively connected with that activity. In such case the provisions of Article 7 shall apply.

2. Gains derived by a resident of a Contracting State in shares in which there is substantial and regular trading of interests, deriving more than 50 per cent of their value from property situated in the other Contracting State may be taxed in that other State.

3. Gains from the alienation of movable property forming part of a permanent establishment which an enterprise of a Contracting State, including such gains from the alienation of such a part of the whole enterprise), may be taxed in that other State.

4. Gains derived by a resident of a Contracting State in connection with the operation of such ships or aircraft, shall be taxable only in that State.

5. Gains from the alienation of any property other than that mentioned in articles 2 and 4 shall be taxable only in the Contracting State of which the resident is a resident.

ARTICLE 14

Income from Employment

1. Subject to the provisions of Articles 15, 17, and 18, remuneration derived by a resident of a Contracting State in connection with an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived from that employment shall be taxable only in that other State.

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

ARTICLE 10

Artistes and Sportsmen

1. Notwithstanding the provisions of Article 14, in a Contracting State as an entertainer, such as a theatre, motion picture or television actor, a musician, or as a sportsman, from his personal activities in a Contracting State, may be taxed in that other State.

2. Where income in respect of personal activities exercised in his capacity as such accrues not to the entertainer or sportsman in a Contracting State, that income may, notwithstanding the provisions of Article 14, be taxed in the Contracting State in which the activities of the entertainer or sportsman are exercised.

3. The provisions of paragraphs 1 and 2 shall not apply to income derived from activities performed in a Contracting State by artistes or sportsmen who are employed wholly or mainly supported by public funds of one or both of the Contracting States or administrative territorial subdivisions or local authorities of a Contracting State, taxable only in the Contracting State of which the artiste or sportsman is a resident.

ARTICLE 11

Pensions

1. Subject to the provisions of paragraph 2 of Article 10, pension payments made by a Contracting State to a resident of a Contracting State shall be taxable only in that State.

2. Notwithstanding the provisions of paragraph 1, pension payments made by a Contracting State to a resident of another Contracting State shall be taxable only in the first-mentioned State if the pension is payable under a pension scheme established in a Contracting State and based on contributions made by the resident in that State.

2. a) Notwithstanding the provisions of paragraph 1, remuneration paid by, or out of funds created by, or administrative territorial subdivision of, a Contracting State in respect of services rendered to that State shall be taxable only in that State.
 - b) However, such pensions and other similar payments shall be taxable in the other Contracting State if the individual is a resident of that State.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to other similar remuneration in respect of services rendered by a Contracting State or a political or administrative territorial subdivision thereof.

ARTICLE 19

Students

Payments which a student or business apprentice who is a resident of a Contracting State a resident of the other Contracting State mentioned State solely for the purpose of his education or maintenance, education or training shall not be taxed in the State where they arise from sources outside that State.

ARTICLE 20

Other Income

1. Items of income beneficially owned by a resident

4. Where, by reason of a special relationship between and some other person, or between both of them and some other person referred to in that paragraph exceeds the amount (if any) referred to in that paragraph between them in the absence of such a relationship, the payment shall be limited to the last-mentioned amount. In such a case, the excess shall be treated according to the laws of each Contracting State, due regard being given to the provisions of this Agreement.

5. No relief shall be available under this Article if the main purposes of any person concerned with the creation of the arrangement which the income is paid to take advantage of this Article is to obtain relief under this Article.

ARTICLE 2

Elimination of Double Taxation

1. In the case of Tajikistan;

a) Where a resident of a Tajikistan derives income from the United Kingdom in accordance with the provisions of this Agreement, Tajikistan shall allow:

(i) as a deduction from the tax on the income in Tajikistan of the amount of the tax paid in the United Kingdom;

(ii) as a deduction from the tax on the income in Tajikistan of the amount of the tax paid in the United Kingdom.

Such deduction in either case shall not, however, exceed the amount of the tax paid in the United Kingdom, which is attributable, as the case may be, to the income in Tajikistan.

- b) a dividend which is paid by a company which is a resident of the United Kingdom tax, when the exemption is applied, the law of the United Kingdom are met;
 - c) the profits of a permanent establishment in the United Kingdom shall be exempt from tax if the exemption is applicable and the conditions of the United Kingdom are met;
 - d) in the case of a dividend not exempted from tax which is paid by a company which is a resident of the United Kingdom and which holds 10 per cent of the voting power in the company mentioned in sub-paragraph a) above shall be payable by the company in respect of its profits.
3. For the purposes of paragraphs 1 and 2, profits, income or other amounts which are taxable in a Contracting State which may be taxed in the other Contracting State under the Agreement shall be deemed to arise from sources in that State.

ARTICLE 22

Non-Discrimination

1. Nationals of a Contracting State shall not be subjected to any taxation or any requirement connected therewith which is more burdensome than the taxation and connected requirements to which nationals of the other Contracting State, in similar circumstances, in particular with respect to residence, are

competent authority of the Contracting State of which he is a resident, to that of the Contracting State in which the request is presented within three years from the first notification, in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the request is not satisfied, if it is not itself able to arrive at a satisfactory solution, to enter into negotiations with the competent authority of the other Contracting State, with a view to the elimination of taxation which is not in accordance with this Agreement, or to the implementation of measures implemented notwithstanding any time limits in the domestic law of the Contracting State.

3. The competent authorities of the Contracting States shall endeavour to resolve, in accordance with the Agreement any difficulties or doubts arising as to the interpretation or application of the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.

4. The competent authorities of the Contracting States shall endeavour to resolve, directly for the purpose of reaching an agreement in the case of double taxation, any difficulties or doubts arising as to the interpretation or application of the Agreement.

5. Where,

a) under paragraph 1, a person has presented a request to the competent authority of a Contracting State on the basis that the actions of the competent authorities of the Contracting States have resulted for that person in taxation which is not in accordance with the provisions of this Agreement, and

b) the competent authorities are unable to resolve the case pursuant to paragraph 2 within two years from the date of the request, the competent authority of the other Contracting State shall endeavour to resolve the case in accordance with the provisions of this Agreement.

2. Any information received under paragraph 1 by secret in the same manner as information obtained under be disclosed only to persons or authorities (including courts) with the assessment or collection of, the enforcement or determination of appeals in relation to, the taxes referred above. Such persons or authorities shall use the information disclose the information in public court proceedings or in foregoing, information received by a Contracting State n information may be used for such other purposes under t authority of the supplying State authorises such use.

3. In no case shall the provisions of paragraphs 1 a Contracting State the obligation:

- a) to carry out administrative measures at va practice of that or of the other Contracting
- 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 which would be contrary to public policy.

4. If information is requested by a Contracting Sta other Contracting State shall use its information gatherin information, even though that other State may not need s The obligation contained in the preceding sentence is sub in no case shall such limitations be construed to permit a information solely because it has no domestic interest in

- a) in Tajikistan:
 - (i) in respect of taxes withheld at source after the first day of the month next following the date on which this Agreement enters into force;
 - (ii) in respect of other taxes on income tax year beginning on or after 1st January next following the date on which this Agreement enters into force;

- b) in the United Kingdom:
 - (i) in respect of taxes withheld at source after the first day of the month next following the date on which this Agreement enters into force;
 - (ii) in respect of income tax and capital gains tax beginning on or after 6th April next following the date on which this Agreement enters into force;
 - (iii) in respect of corporation tax, for an accounting period beginning on or after 1st April next following the date on which this Agreement enters into force;

2. Notwithstanding the provisions of paragraph 1, (b) (ii) (information) shall have effect from the date of entry into force of this Agreement to the taxable period to which the matter relates.

ARTICLE 21

Modification and A

- (i) in respect of taxes withheld at source on or after the date that is six months after the date given;
- (ii) in respect of income tax and capital gains tax beginning on or after 6th April next following the date given;
- iii) in respect of corporation tax, for an accounting period beginning on or after 6th April next following the date on which the accounting period ends.

Done in duplicate at London this first day of July 2014 in two texts being equally authentic. In the case of any divergence the English text shall prevail.

**For the United Kingdom of Great Britain
and Northern Ireland:**

Sayeeda Warsi

For the

Sirod

PART 2

**PROTOCOL TO THE AGREEMENT BETWEEN
THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE REPUBLIC OF TAJIKISTAN FOR THE AVOIDANCE
OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION
IN RESPECT OF INCOME AND CAPITAL GAINS**

At the moment of signing the Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income between the United Kingdom of Great Britain and Northern Ireland and the Republic of Tajikistan, the undersigned have agreed that the following provisions shall apply to the Agreement.

1. With reference to Article 4 (resident):

It is understood that the term “resident of a Contracting State” shall include:

- a) a pension scheme established in that State;
- b) an organisation that is established and is controlled (whether or not for charitable, scientific, cultural, or educational purposes) and that is a resident of that State (notwithstanding that all or part of its income is derived from outside that State) under the domestic law of that State.

2. With reference to Article 10 (dividends):

It is agreed that if an agreement between the Republic of Tajikistan and another State provides for a more favourable rate of withholding tax on dividends paid to a resident of that other State, the rate of withholding tax shall be the more favourable rate.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an Agreement and a Protocol (“the Arrangements”) between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Tajikistan dealing with the avoidance of double taxation and the prevention of fiscal evasion. This Order brings the Arrangements into effect.

The Arrangements aim 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.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Arrangements will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. They will take effect in each country as follows:

- (a) in the United Kingdom:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the month next following the date on which the Arrangements enter 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 Arrangements enter 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 Arrangements enter into force.
- (b) in the Republic of Tajikistan:
 - (i) in respect of taxes withheld at source, for amounts paid or credited on or after the first day of the month next following the date on which the Arrangements enter into force; and
 - (ii) in respect of other taxes on income and capital, for taxes chargeable for any tax year beginning on or after 1st January next following the date on which the Arrangements enter into force.

Until such time as the Arrangements enter into force there are no binding double taxation arrangements in place between the United Kingdom and the Republic of Tajikistan.

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.