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UNITED STATES
OF AMERICA



Treaty Series No. 18 (1980)

Convention

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of the United States of America

for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates of Deceased Persons and on Gifts

London, 19 October 1978

[Instruments of ratification were exchanged on 11 October 1979 and the Convention entered into force on 11 November 1979]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
February 1980*

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CONVENTION
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND AND THE
GOVERNMENT OF THE UNITED STATES OF AMERICA FOR
THE AVOIDANCE OF DOUBLE TAXATION AND THE
PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES
ON ESTATES OF DECEASED PERSONS AND ON GIFTS

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

Desiring to conclude a new Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates of deceased persons and on gifts;

Have agreed as follows :

ARTICLE 1

Scope

This Convention shall apply to any person who is within the scope of a tax which is the subject of this Convention.

ARTICLE 2

Taxes Covered

- (1) The existing taxes to which this Convention shall apply are :
- (a) in the United States: the Federal gift tax and the Federal estate tax, including the tax on generation-skipping transfers; and
 - (b) in the United Kingdom: the capital transfer tax.

(2) This Convention shall also apply to any identical or substantially similar taxes which are imposed by a Contracting State 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 changes which have been made in their respective taxation laws.

ARTICLE 3

General Definitions

- (1) In this Convention :
- (a) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam or any other United States possession or territory;

- (b) the term "United Kingdom" means Great Britain and Northern Ireland;
- (c) the term "enterprise" means an industrial or commercial undertaking;
- (d) the term "competent authority" means :
 - (i) in the United States: the Secretary of the Treasury or his delegate, and
 - (ii) in the United Kingdom: the Commissioners of Inland Revenue or their authorised representative;
- (e) the term "nationals" means :
 - (i) in relation to the United States, United States citizens, and
 - (ii) in relation to the United Kingdom, any citizen of the United Kingdom and Colonies, or any British subject not possessing that citizenship or the citizenship of any other Commonwealth country or territory, provided in either case he had the right of abode in the United Kingdom at the time of the death or transfer;
- (f) the term "tax" means :
 - (i) the Federal gift tax or the Federal estate tax, including the tax on generation-skipping transfers, imposed in the United States, or
 - (ii) the capital transfer tax imposed in the United Kingdom, or
 - (iii) any other tax imposed by a Contracting State to which this Convention applies by virtue of the provisions of paragraph (2) of Article 2,
 as the context requires; and
- (g) the term "Contracting State" means the United Kingdom or the United States as the context requires.

(2) As regards the application of the Convention by a Contracting State, any term not otherwise defined shall, unless the context otherwise requires and subject to the provisions of Article 11 (Mutual Agreement Procedure), have the meaning which it has under the laws of that Contracting State relating to the taxes which are the subject of the Convention.

ARTICLE 4

Fiscal Domicile

- (1) For the purposes of this Convention an individual was domiciled :
 - (a) in the United States: if he was a resident (domiciliary) thereof or if he was a national thereof and had been a resident (domiciliary) thereof at any time during the preceding three years; and
 - (b) in the United Kingdom: if he was domiciled in the United Kingdom in accordance with the law of the United Kingdom or is treated as so domiciled for the purposes of a tax which is the subject of this Convention.

(2) Where by reason of the provisions of paragraph (1) an individual was at any time domiciled in both Contracting States, and

- (a) was a national of the United Kingdom but not of the United States, and
- (b) had not been resident in the United States for Federal income tax purposes in seven or more of the ten taxable years ending with the year in which that time falls,

he shall be deemed to be domiciled in the United Kingdom at that time.

(3) Where by reason of the provisions of paragraph (1) an individual was at any time domiciled in both Contracting States, and

- (a) was a national of the United States but not of the United Kingdom, and
- (b) had not been resident in the United Kingdom in seven or more of the ten income tax years of assessment ending with the year in which that time falls,

he shall be deemed to be domiciled in the United States at that time. For the purposes of this paragraph, the question of whether a person was so resident shall be determined as for income tax purposes but without regard to any dwelling-house available to him in the United Kingdom for his use.

(4) Where by reason of the provisions of paragraph (1) an individual was domiciled in both Contracting States, then, subject to the provisions of paragraphs (2) and (3), his status shall be determined as follows :

- (a) the individual shall be deemed to be domiciled in the Contracting State in which he had a permanent home available to him. If he had a permanent home available to him in both Contracting States, or in neither Contracting State, he shall be deemed to be domiciled in the Contracting State with which his personal and economic relations were closest (centre of vital interests);
- (b) if the Contracting State in which the individual's centre of vital interests was located cannot be determined, he shall be deemed to be domiciled in the Contracting State in which he had an habitual abode;
- (c) if the individual had an habitual abode in both Contracting States or in neither of them, he shall be deemed to be domiciled in the Contracting State of which he was a national; and
- (d) if the individual was a national of both Contracting States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(5) An individual who was a resident (domiciliary) of a possession of the United States and who became a citizen of the United States solely by reason of his

- (a) being a citizen of such possession, or
- (b) birth or residence within such possession,

shall be considered as neither domiciled in nor a national of the United States for the purposes of this Convention.

ARTICLE 5

Taxing Rights

(1) (a) Subject to the provisions of Articles 6 (Immovable Property (Real Property)) and 7 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services) and the following paragraphs of this Article, if the decedent or transferor was domiciled in one of the Contracting States at the time of the death or transfer, property shall not be taxable in the other State.

(b) Sub-paragraph (a) shall not apply if at the time of the death or transfer the decedent or transferor was a national of that other State.

(2) Subject to the provisions of the said Articles 6 and 7, if at the time of the death or transfer the decedent or transferor was domiciled in neither Contracting State and was a national of one Contracting State (but not of both), property which is taxable in the Contracting State of which he was a national shall not be taxable in the other Contracting State.

(3) Paragraphs (1) and (2) shall not apply in the United States to property held in a generation-skipping trust or trust equivalent on the occasion of a generation-skipping transfer; but, subject to the provisions of the said Articles 6 and 7, tax shall not be imposed in the United States on such property if at the time when the transfer was made the deemed transferor was domiciled in the United Kingdom and was not a national of the United States.

(4) Paragraphs (1) and (2) shall not apply in the United Kingdom to property comprised in a settlement; but, subject to the provisions of the said Articles 6 and 7, tax shall not be imposed in the United Kingdom on such property if at the time when the settlement was made the settlor was domiciled in the United States and was not a national of the United Kingdom.

(5) If by reason of the preceding paragraphs of this Article any property would be taxable only in one Contracting State and tax, though chargeable, is not paid (otherwise than as a result of a specific exemption, deduction, exclusion, credit or allowance) in that State, tax may be imposed by reference to that property in the other Contracting State notwithstanding those paragraphs.

(6) If at the time of the death or transfer the decedent or transferor was domiciled in neither Contracting State and each State would regard any property as situated in its territory and in consequence tax would be imposed in both States, the competent authorities of the Contracting States shall determine the situs of the property by mutual agreement.

ARTICLE 6

Immovable Property (Real Property)

(1) Immovable property (real property) may be taxed in the Contracting State in which such property is situated.

(2) The term "immovable property" shall be defined in accordance with the law of the Contracting State in which the property in question is situated.

provided always that debts secured by mortgage or otherwise shall not be regarded as immovable property. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats, and aircraft shall not be regarded as immovable property.

(3) The provisions of paragraphs (1) and (2) shall also apply to immovable property of an enterprise and to immovable property used for the performance of independent personal services.

ARTICLE 7

Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services

(1) Except for assets referred to in Article 6 (Immovable Property (Real Property)) assets forming part of the business property of a permanent establishment of an enterprise may be taxed in the Contracting State in which the permanent establishment is situated.

(2) (a) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

(b) The term "permanent establishment" includes especially:

- (i) a branch;
- (ii) an office;
- (iii) a factory;
- (iv) a workshop; and
- (v) a mine, an oil or gas well, a quarry, or any other place of extraction of natural resources.

(c) A building site or construction or installation project constitutes a permanent establishment only if it lasts for more than twelve months.

(d) Notwithstanding the preceding provisions of this paragraph, the term "permanent establishment" shall be deemed not to include:

- (i) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;
- (ii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
- (iii) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
- (iv) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

- (v) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; or
- (vi) the maintenance of a fixed place of business solely for any combination of activities mentioned in paragraphs (i)—(v) of this sub-paragraph.

(e) Notwithstanding the provisions of sub-paragraphs (a) and (b) where a person—other than an agent of an independent status to whom sub-paragraph (f) applies—is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name 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 for the enterprise, unless the activities of such person are limited to those mentioned in sub-paragraph (d) which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that sub-paragraph.

(f) 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 a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

(g) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State or which carries on business in that other State (whether through a permanent establishment or otherwise) shall not of itself constitute either company a permanent establishment of the other.

(3) Except for assets described in Article 6 (Immovable Property (Real Property)), assets pertaining to a fixed base used for the performance of independent personal services may be taxed in the Contracting State in which the fixed base is situated.

ARTICLE 8

Deductions, Exemptions Etc

(1) In determining the amount on which tax is to be computed, permitted deductions shall be allowed in accordance with the law in force in the Contracting State in which tax is imposed.

(2) Property which passes to the spouse from a decedent or transferor who was domiciled in or a national of the United Kingdom and which may be taxed in the United States shall qualify for a marital deduction there to the extent that a marital deduction would have been allowable if the decedent or transferor had been domiciled in the United States and if the gross estate of the decedent had been limited to property which may be taxed in the United States or the transfers of the transferor had been limited to transfers of property which may be so taxed.

(3) Property which passes to the spouse from a decedent or transferor who was domiciled in or a national of the United States and which may be taxed in the United Kingdom shall, where

- (a) the transferor's spouse was not domiciled in the United Kingdom but the transfer would have been wholly exempt had the spouse been so domiciled, and
- (b) a greater exemption for transfers between spouses would not have been given under the law of the United Kingdom apart from this Convention,

be exempt from tax in the United Kingdom to the extent of 50 per cent of the value transferred, calculated as a value on which no tax is payable and after taking account of all exemptions except those for transfers between spouses.

(4) (a) Property which on the death of a decedent domiciled in the United Kingdom became comprised in a settlement shall, if the personal representatives and the trustees of every settlement in which the decedent had an interest in possession immediately before death so elect and subject to sub-paragraph (b), be exempt from tax in the United Kingdom to the extent of 50 per cent of the value transferred (calculated as in paragraph (3)) on the death of the decedent if:

- (i) under the settlement, the spouse of the decedent was entitled to an immediate interest in possession.
- (ii) the spouse was domiciled in or a national of the United States.
- (iii) the transfer would have been wholly exempt had the spouse been domiciled in the United Kingdom, and
- (iv) a greater exemption for transfers between spouses would not have been given under the law of the United Kingdom apart from this Convention.

(b) Where the spouse of the decedent becomes absolutely and indefeasibly entitled to any of the settled property at any time after the decedent's death, the election shall, as regards that property, be deemed never to have been made and tax shall be payable as if on the death such property had been given to the spouse absolutely and indefeasibly.

(5) Where property may be taxed in the United States on the death of a United Kingdom national who was neither domiciled in nor a national of the United States and a claim is made under this paragraph, the tax imposed in the United States shall be limited to the amount of tax which would have been imposed had the decedent become domiciled in the United States immediately before his death, on the property which would in that event have been taxable.

ARTICLE 9

Credits

(1) Where under this Convention the United States may impose tax with respect to any property other than property which the United States is entitled to tax in accordance with Article 6 (Immovable Property (Real

Property)) or 7 (Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services) (that is, where the decedent or transferor was domiciled in or a national of the United States), then, except in cases to which paragraph (3) applies, double taxation shall be avoided in the following manner:

(a) Where the United Kingdom imposes tax with respect to property in accordance with the said Article 6 or 7, the United States shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United Kingdom with respect to that property.

(b) Where the United Kingdom imposes tax with respect to property not referred to in sub-paragraph (a) and the decedent or transferor was a national of the United States and was domiciled in the United Kingdom at the time of the death or transfer, the United States shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United Kingdom with respect to that property.

(2) Where under this Convention the United Kingdom may impose tax with respect to any property other than property which the United Kingdom is entitled to tax in accordance with the said Article 6 or 7 (that is, where the decedent or transferor was domiciled in or a national of the United Kingdom), then, except in the cases to which paragraph (3) applies, double taxation shall be avoided in the following manner:

(a) Where the United States imposes tax with respect to property in accordance with the said Article 6 or 7, the United Kingdom shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United States with respect to that property.

(b) Where the United States imposes tax with respect to property not referred to in sub-paragraph (a) and the decedent or transferor was a national of the United Kingdom and was domiciled in the United States at the time of the death or transfer, the United Kingdom shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United States with respect to that property.

(3) Where both Contracting States impose tax on the same event with respect to property which under the law of the United States would be regarded as property held in a trust or trust equivalent and under the law of the United Kingdom would be regarded as property comprised in a settlement, double taxation shall be avoided in the following manner:

(a) Where a Contracting State imposes tax with respect to property in accordance with the said Article 6 or 7, the other Contracting State shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the first-mentioned Contracting State with respect to that property.

- (b) Where the United States imposes tax with respect to property which is not taxable in accordance with the said Article 6 or 7 then
- (i) where the event giving rise to a liability to tax was a generation-skipping transfer and the deemed transferor was domiciled in the United States at the time of that event,
 - (ii) where the event giving rise to a liability to tax was the exercise or lapse of a power of appointment and the holder of the power was domiciled in the United States at the time of that event, or
 - (iii) where (i) or (ii) does not apply and the settlor or grantor was domiciled in the United States at the time when the tax is imposed,

the United Kingdom shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United States with respect to that property.

- (c) Where the United States imposes tax with respect to property which is not taxable in accordance with the said Article 6 or 7 and subparagraph (b) does not apply, the United States shall credit against the tax calculated according to its law with respect to that property an amount equal to the tax paid in the United Kingdom with respect to that property.

(4) The credits allowed by a Contracting State according to the provisions of paragraphs (1), (2) and (3) shall not take into account amounts of such taxes not levied by reason of a credit otherwise allowed by the other Contracting State. No credit shall be finally allowed under those paragraphs until the tax (reduced by any credit allowable with respect thereto) for which the credit is allowable has been paid. Any credit allowed under those paragraphs shall not, however, exceed the part of the tax paid in a Contracting State (as computed before the credit is given but reduced by any credit for other tax) which is attributable to the property with respect to which the credit is given.

(5) Any claim for a credit or for a refund of tax founded on the provisions of the present Convention shall be made within six years from the date of the event giving rise to a liability to tax or, where later, within one year from the last date on which tax for which credit is given is due. The competent authority may, in appropriate circumstances, extend this time limit where the final determination of the taxes which are the subject of the claim for credit is delayed.

ARTICLE 10

Non-Discrimination

(1) (a) Subject to the provisions of subparagraph (b), nationals of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which nationals of that other State in the same circumstances are or may be subjected.

(b) Sub-paragraph (a) shall not prevent the United States from taxing a national of the United Kingdom, who is not domiciled in the United States, as a non-resident alien under its law, subject to the provisions of paragraph (5) of Article 8 (Deductions, Exemptions Etc).

(2) The taxation on a permanent establishment which an enterprise of a Contracting State has in the other Contracting State shall not be less favourably levied in that other State than the taxation levied on enterprises of that other State carrying on the same activities.

(3) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not domiciled in that Contracting State any personal allowances, reliefs and reductions for taxation purposes which are granted to individuals so domiciled.

(4) Enterprises of a Contracting State, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting State, shall not be subjected in the first-mentioned Contracting State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned State are or may be subjected.

(5) The provisions of this Article shall apply to taxes which are the subject of this Convention.

ARTICLE 11

Mutual Agreement Procedure

(1) Where a person considers that the actions of one or both of the Contracting States result or will result in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of either Contracting State.

(2) The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. Where an agreement has been reached, a refund as appropriate shall be made to give effect to the agreement.

(3) The competent authorities of the Contracting States shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. In particular the competent authorities of the Contracting States may reach agreement on the meaning of the terms not otherwise defined in this Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement as contemplated by this Convention.

ARTICLE 12

Exchange of Information

The competent authorities of the Contracting States shall exchange such information (being information available under the respective taxation laws of the Contracting States) as is necessary for the carrying out of the provisions of this Convention or for the prevention of fraud or the administration of statutory provisions against legal avoidance in relation to the taxes which are the subject of this Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than persons (including a court or administrative body) concerned with the assessment, enforcement, collection, or prosecution in respect of the taxes which are the subject of the Convention. No information shall be exchanged which would disclose any trade, business, industrial or professional secret or any trade process.

ARTICLE 13

Effect on Diplomatic and Consular Officials and Domestic Law

(1) Nothing in this Convention shall affect the fiscal privileges of diplomatic or consular officials under the general rules of international law or under the provisions of special agreements.

(2) This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded by the laws of either Contracting State.

ARTICLE 14

Entry into Force

(1) This Convention shall be subject to ratification in accordance with the applicable procedures of each Contracting State and instruments of ratification shall be exchanged at Washington as soon as possible.

(2) This Convention shall enter into force immediately after the expiration of thirty days following the date on which the instruments of ratification are exchanged⁽¹⁾, and shall thereupon have effect:

(a) in the United States in respect of estates of individuals dying and transfers taking effect after that date; and

(b) in the United Kingdom in respect of property by reference to which there is a charge to tax which arises after that date.

(3) Subject to the provisions of paragraph (4) of this Article, the Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on the Estates of Deceased Persons signed at Washington on 16 April 1945⁽²⁾ (hereinafter referred to as "the 1945 Convention") shall cease to have effect in respect of property to which this Convention in accordance with the provisions of paragraph (2) of this Article applies.

⁽¹⁾ The Convention entered into force on 11 November 1979.

⁽²⁾ Treaty Series No. 22 (1946), Cmd. 6890.

(4) Where on a death before 27 March 1981 any provision of the 1945 Convention would have afforded any greater relief from tax than this Convention in respect of

(a) any gift inter vivos made by the decedent before 27 March 1974, or

(b) any settled property in which the decedent had a beneficial interest in possession before 27 March 1974 but not at any time thereafter,

that provision shall continue to have effect in the United Kingdom in relation to that gift or settled property.

(5) The 1945 Convention shall terminate on the last date on which it has effect in accordance with the foregoing provisions of this Article.

ARTICLE 15

Termination

(1) This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate this Convention, at any time after five years from the date on which the Convention enters into force provided that at least six months' prior notice has been given through the diplomatic channel. In such event the Convention shall cease to have effect at the end of the period specified in the notice, but shall continue to apply in respect of the estate of any individual dying before the end of that period and in respect of any event (other than death) occurring before the end of that period and giving rise to liability to tax under the laws of either Contracting State.

(2) The termination of the present Convention shall not have the effect of reviving any treaty or arrangement abrogated by the present Convention or by treaties previously concluded between the Contracting States.

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

Done in duplicate at London this 19th day of October 1978.

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

FRANK JUDD

For the Government of the United States of America:

EDWARD J. STREATOR

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