1968 No. 304

TAXES

DEATH DUTIES

The Double Taxation Relief (Estate Duty) (Italy) Order 1968

Laid before the House of Commons in draft
Made - - - - 4th March 1968

At the Court at Buckingham Palace, the 4th day of March 1968

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order was laid before the Commons House of Parliament in accordance with the provisions of subsection (2) of section 56 of the Finance (No. 2) Act 1945(a), and an Address has been presented to Her Majesty by that House praying that an Order may be made in the terms of this Order:

Now, therefore, Her Majesty, in exercise of the powers conferred upon Her by subsection (1) of section 54 of the said Act, by subsection (2) of section 29 of the Finance Act 1962(b), by subsection (1) of section 2 of the Finance Act (Northern Ireland) 1946(c) and by subsection (2) of section 2 of the Finance Act (Northern Ireland) 1962(d), and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1. This Order may be cited as the Double Taxation Relief (Estate Duty) (Italy) Order 1968.

2. It is hereby declared—

(*a*) that the arrangements specified in the Convention set out in the Schedule to this Order have been made with the Government of the Italian Republic with a view to affording relief from double taxation in relation to the estate duty payable under the laws of the United Kingdom and the succession duty and the estate duty (*imposta sull'asse ereditario globale*) imposed under the laws of Italy which are duties leviable on or by reference to death ; and

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

W. G. Agnew.

(a) 9 & 10 Geo. 6. c. 13.
(b) 10 & 11 Eliz. 2. c. 44.
(c) 1946 c. 1 (N.I.).
(d) 1962 c. 17 (N.I.).

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE ITALIAN REPUBLIC FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO DUTIES ON THE ESTATES OF DECEASED PERSONS

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

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

Have agreed as follows:—

ARTICLE I

(1) The duties which are the subject of the present Convention are:

(*a*) in the United Kingdom of Great Britain and Northern Ireland:

the estate duty imposed in Great Britain;

(*b*) in Italy:

the succession duty and the estate duty (imposta sull'asse ereditario globale) imposed in Italy.

(2) The present Convention shall also apply to any other duties of a substantially similar character to the duties referred to in paragraph (1) above which may be imposed in Great Britain or Italy subsequently to the date of signature of the present Convention.

ARTICLE II

(1) In the present Convention, unless the context otherwise requires:

(*a*) the term "United Kingdom" means Great Britain and Northern Ireland;

(*b*) the term "Great Britain" means England, Wales and Scotland;

(*c*) the term "Italy" means the Italian Republic;

(*d*) the term "territory", when used in relation to one or the other Contracting Party, means Great Britain or Italy, as the context requires;

(*e*) the term "duty" means the estate duty imposed in Great Britain or the succession duty and estate duty imposed in Italy, as the context requires.

(2) (*a*) For the purposes of the present Convention, the question whether a deceased person was domiciled at the time of his death in any part of the territory of one of the Contracting Parties shall be determined in accordance with the law in force in that territory.

(*b*) Where by reason of the provisions of the preceding paragraph a deceased person is deemed to be domiciled in the territory of each of the Contracting Parties, then this case shall be solved in accordance with the following rules:—

(i) he shall be deemed to be domiciled in the territory of the Contracting Party in which he had a permanent home available to him at the time of his death; if he had a permanent home available to him in the territory of each of the Contracting Parties he shall be deemed to be domiciled in the territory of the Contracting Party with which his personal and economic relations were closest (centre of vital interests);

(ii) if the Contracting Party in whose territory he had his centre of vital interests cannot be determined, or if he had not a permanent home available to him in the territory of either Contracting Party, he shall be deemed to be domiciled in the territory of the Contracting Party in which he had an habitual abode;

(iii) if he had an habitual abode in the territory of each of the Contracting Parties, or in the territory of neither, he shall be deemed to be domiciled in that of which he was a national ;

(iv) if he was a national of both territories or of neither of them, the taxation authorities of the Contracting Parties shall determine the question by mutual agreement.

(3) In the application of the provisions of the present Convention by either Contracting Party any term not otherwise defined shall, unless the context otherwise requires, have the meaning which it has under the law in force in the territory of that Party relating to the duties which are the subject of the Convention.

ARTICLE III

(1) Where a person was at the time of his death domiciled in any part of the territory of one of the Contracting Parties, the situs of any property shall for the purposes of the imposition of duty and for the purposes of Article V and of the credit to be allowed under Article VI be determined exclusively in accordance with the rules in Article IV of the present Convention.

(2) Paragraph (1) of this Article shall apply if, and only if, apart from the said Article IV:

(*a*) duty would be imposed on the property under the law of the territory of each of the Contracting Parties ; or

(*b*) duty would be imposed on the property under the law of the territory of one of the Contracting Parties and would, but for some specific exemption, also be imposed thereon under the law of the territory of the other Contracting Party.

(3) Paragraph (1) of this Article shall not apply if by reason of its application duty would be imposed in the territory of one of the Contracting Parties on property on which, apart from the said paragraph, duty would not be imposed in that territory.

ARTICLE IV

(1) Land shall be deemed to be situated at the place where it is located ; rights or interests (otherwise than by way of security) which constitute immovable property shall be deemed to be situated at the place where the land to which they relate is located ; the question whether rights or interests constitute immovable property shall be determined in accordance with the law of the place where the land to which they relate is located.

(2) Tangible movable property (other than such property for which specific provision is hereinafter made) and rights or interests (otherwise than by way of security) therein shall be deemed to be situated at the place where it is located at the time of the deceased person's death or, if *in transitu*, at the place of destination ; and bank or currency notes or other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be treated as tangible movable property for the purpose of this paragraph.

(3) Debts, secured or unsecured, excluding the forms of indebtedness for which specific provision is made elsewhere in this Article, shall be deemed to be situated at the place where the debtor was residing at the time of death of the deceased person.

(4) Bank accounts shall be deemed to be situated at the branch at which the account was kept.

(5) Securities issued by any government, or by any local or public authority shall be deemed, if in bearer form, to be situated at the place where they were located at the time of the deceased's death and, if inscribed or registered, at the place of inscription or registration.

(6) Shares, stock, debentures or debenture stock in a company (including any such property held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place where the company was incorporated.

(7) An interest in a partnership shall be deemed to be situated at the place where the business was carried on ; and if the business was carried on at more than one place an appropriate proportion of the interest shall be deemed to be situated at each of those places.

(8) Goodwill as a trade, business or professional asset shall be deemed to be situated at the place where the trade, business or profession to which it pertains was carried on ; and if a trade, business or profession was carried on at more than one place an appropriate proportion of the goodwill shall be deemed to be situated at each of those places.

(9) Ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft.

(10) Patents, trade marks and designs shall be deemed to be situated at the place where they were registered.

(11) Copyright, and rights or licences to use any copyrighted material, patent, trade mark or design shall be deemed to be situated at the place where the rights arising therefrom were exercisable.

(12) Rights or causes of action *ex delicto* surviving for the benefit of the estate of a deceased person shall be deemed to be situated at the place where such rights or causes of action arose.

(13) Any other property shall be deemed to be situated in the territory in which the deceased person was domiciled at the time of his death.

Article V

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

(2) Where duty is imposed in the territory of one Contracting Party on the death of a person who at the time of his death was not domiciled in any part of that territory but was domiciled in some part of the territory of the other Contracting Party, no account shall be taken, in determining the amount or rate of such duty, of property situated outside the former territory, provided that this paragraph shall not apply to duty imposed in the territory of a Contracting Party on property passing under a settlement governed by its law.

Article VI

(1) Where one Contracting Party imposes duty on any property which is not situated in its territory but is situated in the territory of the other Contracting Party, the former Party shall allow against so much of its duty (as otherwise computed) as is attributable to that property a credit (not exceeding the amount of the duty so attributable) equal to so much of the duty imposed in the territory of the other Contracting Party as is attributable to such property.

(2) For the purposes of this Article, the amount of the duty of a Contracting Party attributable to any property shall be ascertained after taking into account any credit, allowance or relief, or any remission or reduction of duty other than in respect of duty payable in the territory of the other Contracting Party.

Article VII

Any claim for a credit or for a refund of duty founded on the provisions of the present Convention shall be made within five years from the date of the death of the deceased person in respect of whose estate the claim is made, or, where the event causing duty to be payable occurs at some later date, within five years from that date.

ARTICLE VIII

(1) The taxation authorities of the Contracting Parties shall exchange such information (being information available under the respective taxation laws of the Contracting Parties) as is necessary for carrying out the provisions of the present Convention or for the prevention of fraud or the administration of statutory provisions against avoidance in relation to the duties which are the subject of the present Convention. Any information so exchanged shall be treated as secret and shall not be disclosed to any person other than those concerned with the administration, assessment and collection of the duties which are the subject of the present Convention. No information shall be exchanged which might disclose any trade secret or trade process.

(2) As used in this Article, the term " taxation authorities " means—

(*a*) in the case of Italy, the Ministero delle Finanze, Direzione Generale delle Tasse e Imposte sugli Affari ;

(*b*) in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative ;

(*c*) in the case of Northern Ireland (to which the present Convention applies under Article X), the Minister of Finance or his authorised representative ;

(*d*) in the case of any territory to which the present Convention is extended under Article IX, the competent authority for the administration in such territory of the duties to which the present Convention applies.

ARTICLE IX

(1) The present Convention may be extended, either in its entirety or with modifications, to any territory for whose international relations the United Kingdom is responsible and which imposes duties substantially similar in character to those which are the subject of the Convention, and any such extension shall take effect from such date and subject to such modifications and conditions (including conditions as to termination) as may be specified and agreed between the Contracting Parties in Notes to be exchanged for this purpose.

(2) The termination in respect of the United Kingdom or Italy of the present Convention under Article XII shall, unless otherwise expressly agreed by the Contracting Parties, terminate the application of the Convention to any territory to which it has been extended under this Article.

ARTICLE X

The present Convention shall apply in relation to Northern Ireland and to the estate duty imposed in Northern Ireland as it applies in relation to Great Britain and to the estate duty imposed in Great Britain, but shall be separately terminable in respect of Northern Ireland in accordance with the provisions of Article XII.

ARTICLE XI

(1) The present Convention shall be ratified and the instruments of ratification shall be exchanged at Rome as soon as possible.

(2) The present Convention shall enter into force on the date of the exchange of instruments of ratification(a) and shall be applicable to estates or inheritances in the case of persons who die on or after that date.

ARTICLE XII

The present Convention shall remain in force indefinitely but either of the Contracting Parties may, not earlier than three years after the Convention enters into force, give to the other Contracting Party, through the diplomatic channel, written notice of termination. In such event the Convention shall not be

(a) Instruments of ratification were exchanged on 9th February 1968.

effective as to the estates of persons dying on or after the date (not being earlier than the sixtieth day after the date of such notice) specified in such notice, or, if no date is specified, on or after the sixtieth day after the date of such notice.

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

Done in duplicate at London the 15th day of February, 1966, in the Italian and English languages, both texts being equally authoritative.

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

WALTER PADLEY

For the Government of the Italian Republic:

G. GUIDOTTI

EXPLANATORY NOTE

(This Note is not part of the Order.)

The Convention with Italy which is scheduled to this Order provides (in Article IV) a code of rules for determining the situs of categories of property which may be subject to duty on the death of a person dying domiciled in either country and (in Article VI) a supplementary system of credits. The code does not apply where the effect would be to bring within either country's charge property which, apart from the code, would be outside the charge of the country in question (paragraph (3) of Article III).

In some cases the situs code will itself eliminate double taxation: for example, on the death of a person domiciled in the United Kingdom, bearer shares in a company incorporated in the United Kingdom will not be liable to duty in Italy even though the share certificates were physically located in Italy at the date of the deceased's death. But where, notwithstanding the application of the situs code, property is chargeable with duty by both countries, Article VI provides for a credit to be given by the country in which the property is not situated for duty paid in the other country.

Rules are provided in paragraph (2) of Article II to establish the domicile of a deceased person for the purposes of this Convention when he would otherwise be deemed to be domiciled in both countries.

Article VIII provides for the exchange of information between the taxation authorities of the two countries.

The Convention, which extends also to the Estate Duty (separate from that in Great Britain) which is imposed in Northern Ireland (Article X), will apply in connection with deaths occurring after the date of exchange of instruments of ratification.