1961 No. 578

DEATH DUTIES

The Double Taxation Relief (Estate Duty) (Sweden) Order, 1961

Laid before the House of Commons in draft
Made - - - - 24th March, 1961

At the Court at Buckingham Palace, the 24th day of March, 1961

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 (4) of section seventy-seven of the Finance Act, 1948(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 the said section seventy-seven and by subsection (1) of section two of the Finance Act (Northern Ireland), 1948(b), 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) (Sweden) Order, 1961.

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 Kingdom of Sweden 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 imposed under the laws of Sweden which is a duty leviable on or by reference to death; and

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

W. G. Agnew.

(a) 11 & 12 Geo. 6. c. 49. (b) 1948, c. 15 (N.I.).

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE KINGDOM OF SWEDEN FOR RELIEF FROM DOUBLE TAXATION 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 Kingdom of Sweden;

Desiring to conclude a Convention for relief from double taxation 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 Sweden:
the succession duty imposed in Sweden.

(2) The present Convention shall also apply to any other duties of a substantially similar character to the duties referred to in paragraph (1) which may be imposed in Great Britain or Sweden 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, and does not include the Channel Islands and the Isle of Man;

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

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

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

(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 but not in any part of the territory of the other Contracting Party, the situs of any property shall for the purposes of the imposition of duty be determined exclusively in accordance with the rules in Article IV.

(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

The rules referred to in paragraph (1) of Article III are:

(*a*) rights or interests (otherwise than by way of security) in or over immovable property shall be deemed to be situated at the place where such property is located;

(*b*) rights or interests (otherwise than by way of security) in or over tangible movable property, other than such property for which specific provision is hereinafter made, and in or over bank or currency notes, other forms of currency recognised as legal tender in the place of issue, negotiable bills of exchange and negotiable promissory notes, shall be deemed to be situated at the place where such property, notes, currency or documents are located at the time of death or, if *in transitu*, at the place of destination;

(*c*) debts, secured or unsecured, including securities issued by any Government, municipality or public authority, and debentures and debenture stock issued by any company, but excluding the forms of indebtedness for which specific provision is made herein, shall be deemed to be situated at the place where the deceased person was domiciled at the time of his death;

(*d*) shares or stock in a company (including shares or stock held by a nominee, whether the beneficial ownership is evidenced by scrip certificates or otherwise) shall be deemed to be situated at the place in or under the law of which the company was incorporated;

(*e*) moneys payable under a policy of assurance or insurance shall be deemed to be situated at the place where the deceased person was domiciled at the time of his death;

(*f*) ships and aircraft and shares thereof shall be deemed to be situated at the place of registration of the ship or aircraft;

(*g*) 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 is carried on;

(*h*) patents, trade marks, designs, copyright and rights or licences to use any patent, trade mark, design or copyrighted material shall be deemed to be situated at the place where the deceased person was domiciled at the time of his death;

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

(*j*) judgment debts shall be deemed to be situated at the place where the judgment is recorded;

(*k*) any other right or interest shall be deemed to be situated at the place determined by the law in force in the territory of the Contracting Party in whose territory the deceased person was not domiciled.

ARTICLE V

(1) (*a*) 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 tax is imposed.

(*b*) Notwithstanding the provisions of the foregoing sub-paragraph, in determining the amount on which duty is to be computed in Sweden, deduction shall be permitted for duty imposed in Great Britain on property situated therein and subject to duty in Sweden, so long as in determining the amount on which duty is to be computed in Great Britain deduction is permitted for duty imposed in Sweden on property situated therein and subject to duty in Great Britain.

(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 Great Britain on property passing under a disposition governed by the law of Great Britain.

(3) Duty shall not be imposed in Sweden on immovable property situated in Great Britain so long as duty is not imposed in Great Britain on immovable property situated in Sweden passing otherwise than under a disposition governed by the law of Great Britain; provided that where a deceased person was domiciled in Sweden at the time of his death, such property situated in Great Britain may be taken into account in determining the rate of duty on the remainder of his estate.

ARTICLE VI

(1) Any claim for a refund of duty founded on the provisions of the present Convention shall be made within six years from the date of the death of the deceased person in respect of whose estate the claim is made, or, in the case of an interest in expectancy where payment of duty is deferred until the date on which the interest falls into possession, within six years from that date.

(2) Any such refund shall be made without payment of interest on the amount so refunded.

ARTICLE VII

(1) The competent authorities of the two Contracting Parties may communicate with each other directly for the purpose of resolving any difficulty or doubt as to the application or interpretation of this Convention.

(2) In this Article, the term "competent authorities" means, in the case of Great Britain, the Commissioners of Inland Revenue or their authorised representative; in the case of Sweden, the Minister of Finance or his authorised representative; in the case of Northern Ireland, the Minister of Finance or his authorised representative; and, in the case of any territory to which the present Convention is extended under Article VIII, the competent authority for the administration in such territory of the duties to which the present Convention applies.

ARTICLE VIII

(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 Sweden of the present Convention under Article XI 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 IX

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 XI.

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ARTICLE X

(1) The present Convention shall be ratified in accordance with the respective constitutional and legal requirements of the territories of the Contracting Parties.

(2) The instruments of ratification shall be exchanged at Stockholm as soon as possible.

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

ARTICLE XI

The present Convention shall remain in force indefinitely but either of the Contracting Parties may, on or before the thirtieth day of June in any year, but 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 cease to be effective at the end of the calendar year in which the notice is given but shall continue to apply in respect of the estate of any person dying before the end of that year.

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

Done in duplicate at London the 28th day of July, 1960, in the English and Swedish languages, both texts being equally authoritative.

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

David Ormsby Gore.

For the Government of the Kingdom of Sweden:

Gunnar Hägglöf.

EXPLANATORY NOTE

(This Note is not part of the Order, but is intended to indicate its general purport.)

Article IV of the double death duties Convention with Sweden, which is scheduled to this Order, provides a code of rules for determining the situs of the categories of property which may pass on the death of a person who dies domiciled in either country. Thus, under Rule (*d*), the situs of shares or stock in a company is to be the place of incorporation of the company. Under Rules (*c*), (*e*) and (*h*), on the other hand, the situs of debts, of an insurance policy on the deceased's life and of patents and copyright, is to follow the domicile of the deceased. But the code of rules does not apply where the effect would be to bring within either country's charge to duty property which, apart from the code, would be outside the charge of the country in question (Paragraph (3) of Article III).

Article V puts certain limits to the scope of the charge to duty in either country and also provides for certain deductions from the estate in determining the amount of the duty.

The Convention applies to the estate duty imposed in Great Britain and to the separate estate duty imposed in Northern Ireland.

The Convention is effective only as regards the estates of persons who die on or after the date when it enters into force.