STATUTORY INSTRUMENTS

1965 No. 599

TAXES

DEATH DUTIES

The Double Taxation Relief (Estate Duty) (Sweden) Order 1965

Laid before the House of Commons in draft

Made - - - - 24th March 1965

At the Court at Buckingham Palace, the 24th day of March 1965

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) (Sweden) Order 1965.

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) 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 KINGDOM OF SWEDEN 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 Kingdom of Sweden;

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 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) above 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)(*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 sub-paragraph (*a*) above 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.

(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*) assets forming part of an undivided estate shall be deemed to be situated where each individual asset is located in accordance with rules (*a*)-(*j*) and (*l*) of this Article;

(*l*) 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 domiciled.

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 Great Britain on property passing under a disposition governed by the law of Great Britain or to duty imposed in Sweden in the case of a Swedish national dying domiciled in any part of Great Britain.

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) Where a person was at the time of his death domiciled in any part of the territory of one of the Contracting Parties and each Contracting Party imposes duty on any property which is situated outside the territories of both Parties, the Party of the territory where the deceased was not domiciled at the time of his death 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.

(3) 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, allowances and relief or any remission or reduction of duty otherwise than in respect of duty payable in the territory of the other Contracting Party.

ARTICLE VII

(1) Any claim for a credit or 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, where the event causing duty to be payable occurs at some later date, within six years from that date.

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

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 legal 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) The taxation authorities of the Contracting Parties may communicate with each other directly for the purpose of giving effect to the provisions of this Convention and for resolving any difficulty or doubt as to the application or interpretation of the Convention.

(3) In this Convention, the term "taxation 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 IX, the taxation 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 Sweden 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

(1) 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.

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

ARTICLE XI

(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 London 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.

(4) The Convention between the United Kingdom of Great Britain and Northern Ireland and Sweden for relief from double taxation with respect to duties on the estates of deceased persons, signed at London on the 28th of July, 1960, shall terminate and cease to be effective as respects duties to which the present Convention in accordance with paragraph (3) above applies.

ARTICLE XII

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 Stockholm, in the English and Swedish languages, both texts being equally authoritative, this 14th day of October, 1964.

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

P. M. CROSTHWAITE.

For the Government of the Kingdom of Sweden:

TORSTEN NILSSON.

EXPLANATORY NOTE

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

The Convention scheduled to this Order replaces the existing Convention with Sweden signed on 28th July 1960, which is of more limited application. The new Convention will be effective as regards the estates of persons who die on or after the exchange of instruments of ratification by the two countries.

Article IV of the new Convention, which reproduces in slightly modified form Article IV of the earlier Convention, 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. The code of rules does not, however, apply where the effect of applying it 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 (2) of Article III).

In some cases, but not in all, the situs code will of itself eliminate double taxation—for example, Swedish patents and copyrights owned by a person domiciled in the United Kingdom will be chargeable only to British duty. The earlier Convention made no provision for the elimination of double taxation in cases where duty remains chargeable by both countries despite the situs code, because at the time it was negotiated the governing legislation did not authorise the Government to enter into a full double taxation agreement with a country whose death duties were different in nature from the British estate duty. Under Section 29 Finance Act 1962, however, agreements may now be made providing for crediting duty against duty

whether or not the duty imposed in the other country is of a similar character to our estate duty. Accordingly under this new agreement, where duty remains chargeable by both countries, Article VI provides for a credit to be given by the country in which the deceased dies domiciled for the duty charged by the other country on property in that other country. In cases where the deceased was domiciled in both countries a formula is to be applied to determine in which country he is deemed to have been domiciled for the purposes of the Convention (paragraph (2)(*b*) of Article II).

Provision is made in Article VIII for the exchange of information between the taxation authorities of the two countries.

The Convention applies to the estate duty (separate from the British estate duty) which is imposed in Northern Ireland