Draft Order in Council laid before the House of Commons under section 5(2) of the Taxation (International and Other Provisions) Act 2010 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2018 No. 000

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Austria) Order 2018

Made - - - - ***

At the Court at Buckingham Palace, the *** day of 2018

Present,

The Queen's Most Excellent Majesty in Council

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(**a**) and section 173(7) of the Finance Act 2006(**b**) and approved by resolution of that House.

Accordingly, Her Majesty, in exercising 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 (Austria) Order 2018.

Double taxation and international enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Schedule have been made with the Republic of Austria—

(**a**) 2010 c.8.
(**b**) 2006 c. 25.

(i) with a view to affording relief from double taxation in relation to capital gains tax, corporation tax, income tax and taxes of a similar character imposed by the laws of the Republic of Austria, and

(ii) for the purpose of assisting international tax enforcement; and

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

Name
Clerk of the Privy Council

SCHEDULE

Article 2

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

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

Intending to conclude a Convention for the elimination of double taxation with respect to taxes on income and on capital gains without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Convention for the indirect benefit of residents of third States);

Have agreed as follows:

Article 1

PERSONS COVERED

This Convention shall apply to persons who are residents of one or both of the Contracting States.

Article 2

TAXES COVERED

(1) This Convention shall apply to taxes on income and on capital gains imposed on behalf of a Contracting State or of its political subdivisions or local authorities, irrespective of the manner in which they are levied.

(2) There shall be regarded as taxes on income and on capital gains all taxes imposed on total income, or on elements of income, including taxes on gains from the alienation of movable or immovable property, as well as taxes on capital appreciation.

(3) The existing taxes to which the Convention shall apply are in particular:

(a) in Austria:

(i) the income tax (die Einkommensteuer);

(ii) the corporation tax (die Körperschaftsteuer);

(hereinafter referred to as "Austrian tax");

(b) in the United Kingdom:

(i) the income tax;

(ii) the corporation tax; and

(iii) the capital gains tax.

(hereinafter referred to as "United Kingdom tax").

(4) The Convention shall apply also to any identical or substantially similar taxes that are imposed 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 significant changes that have been made in their taxation laws.

Article 3

GENERAL DEFINITIONS

(1) For the purposes of this Convention, unless the context otherwise requires:

(a) the term "Austria" means the Republic of Austria;

(b) the term "United Kingdom" means Great Britain and Northern Ireland, including any area outside the territorial sea of the United Kingdom designated under its laws concerning the Continental Shelf and in accordance with international law as an area within which the rights of the United Kingdom with respect to the sea bed and subsoil and their natural resources may be exercised;

(c) the terms "a Contracting State" and "the other Contracting State" mean Austria or the United Kingdom, as the context requires;

(d) the term "person" includes an individual, a company and any other body of persons;

(e) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

(f) the term "enterprise" applies to the carrying on of any business;

(g) the terms "enterprise of a Contracting State" and "enterprise of the other Contracting State" mean respectively an enterprise carried on by a resident of a Contracting State and an enterprise carried on by a resident of the other Contracting State;

(h) the term "international traffic" means any transport by a ship or aircraft, except when the ship or aircraft is operated solely between places in a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State;

(i) the term "competent authority" means:

  (i) in Austria: the Federal Minister of Finance or his authorised representative;

  (ii) in the United Kingdom, the Commissioners for Her Majesty's Revenue and Customs or their authorised representative;

(j) the term "national" means:

  (i) in relation to Austria, any individual possessing the nationality or citizenship of Austria; and any legal person, partnership or association deriving its status as such from the laws in force in Austria;

  (ii) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership or association deriving its status as such from the laws in force in the United Kingdom;

(k) the term "business" includes the performance of professional services and of other activities of an independent character:

(l) the term "pension scheme" means any scheme or other arrangement established in a Contracting State which:

  (i) is generally exempt from income taxation in that State; and

  (ii) operates to administer or provide pension or retirement benefits or to earn income for the benefit of one or more such arrangements.

(2) As regards the application of the Convention at any time by a Contracting State, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that State for the purposes of the taxes to which the Convention applies, any meaning under the applicable tax laws of that State prevailing over a meaning given to the term under other laws of that State.

Article 4

RESIDENT

(1) For the purposes of this Convention, the term "resident of a Contracting State" means any person who, under the laws of that State, is liable to tax therein by reason of his domicile, residence, place of management, place of incorporation or any other criterion of a similar nature, and also includes that State and any political subdivision or local authority thereof. This term,

however, does not include any person who is liable to tax in that State in respect only of income or capital gains from sources in that State.

(2) The term "resident of a Contracting State" includes:

(a) a pension scheme established in that State; and

(b) an organisation that is established and is operated exclusively for religious, charitable, scientific, cultural, or educational purposes (or for more than one of those purposes) and that is a resident of that State according to its laws, notwithstanding that all or part of its income or gains may be exempt from tax under the domestic law of that State.

(3) Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting States, then his status shall be determined as follows:

(a) he shall be deemed to be a resident only of the State in which he has a permanent home available to him; if he has a permanent home available to him in both States, he shall be deemed to be a resident only of the State with which his personal and economic relations are closer (centre of vital interests);

(b) if the State in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either State, he shall be deemed to be a resident only of the State in which he has an habitual abode;

(c) if he has an habitual abode in both States or in neither of them, he shall be deemed to be a resident only of the State of which he is a national;

(d) if he is a national of both States or of neither of them, the competent authorities of the Contracting States shall settle the question by mutual agreement.

(4) Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting States, then it shall be deemed to be a resident of the State in which its place of effective management is situated. In cases of doubt, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the State in which the person's place of effective management is exercised, and in doing so shall take into account all relevant factors. In the absence of such agreement, that person shall not be entitled to claim any benefits provided by this Convention except those provided by Article 21 (Elimination of Double Taxation), Article 22 (Non-discrimination) and Article 23 (Mutual Agreement Procedure).

Article 5

PERMANENT ESTABLISHMENT

(1) 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.

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

(a) a place of management;

(b) a branch;

(c) an office;

(d) a factory;

(e) a workshop, and

(f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.

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

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

(a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

(e) 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;

(f) the maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs a) to e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

(5) Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts 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 for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 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 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 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.

(7) 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.

Article 6

INCOME FROM IMMOVABLE PROPERTY

(1) Income derived by a resident of a Contracting State from immovable property (including income from agriculture or forestry) situated in the other Contracting State may be taxed in that other State.

(2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. 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 paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

(4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

Article 7

BUSINESS PROFITS

(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent 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 situated therein, there shall in each Contracting State be attributed to that permanent 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 dealing wholly independently with the enterprise of which it is a permanent establishment.

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

(4) Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

(5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

(6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

(7) Where profits include items of income or capital gains which are dealt with separately in other Articles of this Convention, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8

SHIPPING AND AIR TRANSPORT

(1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

(2) For the purposes of this Article, profits from the operation of ships or aircraft in international traffic include:

(a) profits from the rental on a bareboat basis of ships or aircraft; and

(b) profits from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise;

where such rental or such use, maintenance or rental, as the case may be, is incidental to the operation of ships or aircraft in international traffic.

(3) The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9

ASSOCIATED ENTERPRISES

(1) Where

(a) an enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State, or

(b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the

enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

(2) Where a Contracting State includes in the profits of an enterprise of that State and taxes accordingly profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Convention and the competent authorities of the Contracting States shall if necessary consult each other.

Article 10

DIVIDENDS

(1) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.

(2) However, dividends paid by a company which is a resident of a Contracting State:

(a) may also be taxed in the Contracting State of which the company paying the dividends is a resident and according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed:

(i) 10 per cent of the gross amount of the dividends, except as provided in sub-paragraph a) (ii);

(ii) 15 per cent of the gross amount of the dividends where those dividends are paid by a relevant investment vehicle;

(b) shall, notwithstanding the provisions of sub-paragraph a), be exempt from tax in the Contracting State of which the company paying the dividends is a resident if the beneficial owner of the dividends is:

(i) a company (other than a partnership) which is a resident of the other Contracting State and controls, directly or indirectly, at least 10 per cent of the voting power in the company paying the dividends (other than where the dividends are paid by a relevant investment vehicle); or

(ii) a pension scheme.

This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.

(3) The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt claims, participating in profits, as well as any other item which is subjected to the same taxation treatment as income from shares by the laws of the State of which the company making the distribution is a resident.

(4) The provisions of paragraphs 1 and 2 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting State, carries on business in the other Contracting State of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(5) Where a company which is a resident of a Contracting State derives profits or income from the other Contracting State, that other State may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other State or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other State, nor subject the company’s undistributed profits to a tax on the company’s undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in that other State.

(6) For the purposes of paragraph 2, a relevant investment vehicle means:

(a) in Austria, a real estate investment fund which meets the conditions of the Austrian Act on Real Estate Investment Funds ("Immobilien-Investmentfondsgesetz"); and

(b) in the United Kingdom, a real estate investment trust within the meaning of Part 12 of Corporation Tax Act 2010 and a property authorised investment fund within the meaning of Part 4A of the Authorised Investment Funds (Tax) Regulations 2006 (SI 2006/964).

The competent authorities of the Contracting States may agree to regard as a relevant investment vehicle similar arrangements or entities established in a Contracting State.

Article 11

INTEREST

(1) Interest arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting State, carries on business in the other Contracting State in which the interest arises through a permanent establishment situated therein and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) Interest shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the interest, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment in connection with which the indebtedness on which the interest is paid was incurred, and such interest is borne by such permanent establishment, then such interest shall be deemed to arise in the State in which the permanent establishment is situated.

(5) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest paid exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 12

ROYALTIES

(1) Royalties arising in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in that other State.

(2) The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information (know-how) concerning industrial, commercial or scientific experience.

(3) The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting State, carries on business in the other Contracting State in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, exceeds, for whatever reason, the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting State, due regard being had to the other provisions of this Convention.

Article 13

CAPITAL GAINS

(1) Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.

(2) Gains derived by a resident of a Contracting State from the alienation of shares, other than shares in which there is substantial and regular trading on a Stock Exchange, or comparable interests, deriving more than 50 per cent of their value directly or indirectly from immovable 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 the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other State.

(4) Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or from movable property pertaining to 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 referred to in paragraphs 1, 2, 3 and 4 shall be taxable only in the Contracting State of which the alienator is a resident.

Article 14

INCOME FROM EMPLOYMENT

(1) Subject to the provisions of Articles 15, 17, 18 and 19, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of 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 therefrom may be taxed 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:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned: and

(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State; and

(c) the remuneration is not borne by a permanent establishment which the employer has in the other State.

(3) Notwithstanding the preceding provisions of this Article, remuneration derived by a resident of a Contracting State in respect of an employment, as a member of the regular complement of a ship or aircraft, that is exercised aboard a ship or aircraft operated in international traffic, other than aboard a ship or aircraft operated solely within the other Contracting State, shall be taxable only in the first-mentioned State.

Article 15

DIRECTORS' FEES

Directors' fees and other similar payments derived by a resident of a Contracting State in his capacity as a member of the board of directors of a company which is a resident of the other Contracting State may be taxed in that other State.

Article 16

ARTISTES AND SPORTSMEN

(1) Notwithstanding the provisions of Articles 7 and 14, income derived by a resident of a Contracting State as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the other Contracting State, may be taxed in that other State.

(2) Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Articles 7 and 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 if the visit to that State is wholly or mainly supported by public funds of the other State or political subdivisions or local authorities thereof or by an institution which is recognised as a non-profit institution. In such a case, the income is taxable only in the Contracting State in which the person is a resident.

Article 17

PENSIONS

(1) Subject to the provisions of paragraphs 1 and 2 of Article 18, pensions and other similar remuneration paid to a resident of a Contracting State in consideration of past employment, shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1, a lump sum payment derived from a pension scheme established in a Contracting State and beneficially owned by a resident of the other Contracting State shall be taxable only in the first-mentioned State.

(3) Contributions made by or on behalf of an individual who exercises employment or self-employment in a Contracting State ("the host state") to a pension scheme that is recognised for tax purposes in the other Contracting State ("the home state") shall, for the purposes of:

(a) determining the individual's tax payable in the host state; and

(b) determining the profits of his employer which may be taxed in the host state;

be treated in that State in the same way and subject to the same conditions and limitations as contributions made to a pension scheme that is recognised for tax purposes in the host state, to the extent that they are not so treated by the home state.

(4) The provisions of paragraph 3 shall apply only if:

(a) the individual was not a resident of the host state, and was participating in the pension scheme (or in another similar pension scheme for which the first-mentioned pension scheme was substituted), immediately before he began to exercise employment or self-employment in the host state; and

(b) the pension scheme is accepted by the competent authority of the host state as generally corresponding to a pension scheme recognised as such for tax purposes by that State.

(5) For the purposes of this Article, a pension scheme is recognised for tax purposes in a Contracting State if the contributions to the scheme would qualify for tax relief in that State and if

payments made to the scheme by the individual's employer are not deemed in that State to be taxable income of the individual.

Article 18

GOVERNMENT SERVICE

(1) Remuneration or pensions paid by, or out of funds created by, the United Kingdom or a political subdivision, local authority or statutory body thereof to an individual in respect of present or past services rendered to the United Kingdom, or to a political subdivision, local authority or statutory body thereof, shall be taxable only in the United Kingdom unless the individual is an Austrian national without also being a United Kingdom national.

(2) Remuneration or pensions paid by, or out of funds created by, Austria or a political subdivision, local authority or statutory body thereof to an individual in respect of present or past services rendered to Austria or to a political subdivision, local authority or statutory body thereof, shall be taxable only in Austria unless the individual is a national of the United Kingdom without also being an Austrian national.

(3) The provisions of paragraphs 1 and 2 shall not apply to remuneration or pensions in respect of services in connection with any trade or business.

Article 19

STUDENTS

(1) Payments which a student or business apprentice who is or was immediately before visiting a Contracting State a resident of the other Contracting State and who is present in the first mentioned State solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that State, provided that such payments arise from sources outside that State.

(2) Remuneration which a student or business apprentice who is or was formerly a resident of a Contracting State derives from an employment which he exercises in the other Contracting State for a period or periods not exceeding in the aggregate 183 days in the fiscal year concerned shall not be taxed in that other State if the employment is directly related to his studies or apprenticeship carried out in the first mentioned State.

Article 20

OTHER INCOME

(1) Items of income beneficially owned by a resident of a Contracting State, wherever arising, not dealt with in the foregoing Articles of this Convention shall be taxable only in that State.

(2) Notwithstanding the provisions of paragraph 1, where an amount of income is paid to a resident of a Contracting State out of income received by trustees or personal representatives administering the estates of deceased persons and those trustees or personal representatives are residents of the other Contracting State, that amount shall be treated as arising from the same sources, and in the same proportions, as the income received by the trustees or personal representatives out of which that amount is paid.

Any tax paid by the trustees or personal representatives in respect of the income paid to the beneficiary shall be treated as if it had been paid by the beneficiary.

(3) The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the beneficial owner of such income, being a resident of a Contracting State, carries on business in the other Contracting State through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

(4) Income derived by a person who is a resident of a Contracting State from the other Contracting State under a legal claim to maintenance may not be taxed in the first-mentioned State if, according to the laws of that other Contracting State, such income would have been exempt from tax had that person been a resident of that other Contracting State.

(5) Where, by reason of a special relationship between the resident referred to in paragraph 1 and some other person, or between both of them and some third person, the amount of the income referred to in that paragraph exceeds the amount (if any) which would have been agreed upon between them in the absence of such a relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the income shall remain taxable according to the laws of each Contracting State, due regard being had to the other applicable provisions of this Convention.

Article 21

ELIMINATION OF DOUBLE TAXATION

Double taxation shall be eliminated as follows:

(1) In the case of Austria:

(a) Where a resident of Austria derives income which, in accordance with the provisions of this Convention, may be taxed in the United Kingdom, Austria shall allow as a deduction from the tax on the income of that resident, an amount equal to the tax on income or capital gains paid in the United Kingdom;

Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or the capital gains which may be taxed in the United Kingdom.

(b) Where in accordance with any provision of the Convention income derived by a resident of Austria is exempt from tax in that State, Austria may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

(2) Subject to the provisions of the law of the United Kingdom regarding the allowance as a credit against United Kingdom tax of tax payable in a territory outside the United Kingdom or, as the case may be, regarding the exemption from United Kingdom tax of a dividend arising in a territory outside the United Kingdom or of the profits of a permanent establishment situated in a territory outside the United Kingdom (which shall not affect the general principle hereof):

(a) Austrian tax payable under the laws of Austria and in accordance with this Convention, whether directly or by deduction, on profits, income or chargeable gains from sources within Austria (excluding in the case of a dividend tax payable in respect of the profits out of which the dividend is paid) shall be allowed as a credit against any United Kingdom tax computed by reference to the same profits, income or chargeable gains by reference to which the Austrian tax is computed;

(b) a dividend which is paid by a company which is a resident of Austria to a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax, when the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;

(c) the profits of a permanent establishment in Austria of a company which is a resident of the United Kingdom shall be exempted from United Kingdom tax when the exemption is applicable and the conditions for exemption under the law of the United Kingdom are met;

(d) in the case of a dividend not exempted from tax under subparagraph b) above which is paid by a company which is a resident of Austria to a company which is a resident of the United Kingdom and which controls directly or indirectly at least 10 per cent of the voting power in the company paying the dividend, the credit mentioned in subparagraph a) above shall also take into account the Austrian tax payable by the company in respect of its profits out of which such dividend is paid.

(3) For the purposes of paragraphs 1 and 2, profits, income and gains owned by a resident of a Contracting State which may be taxed in the other Contracting State in accordance with this Convention shall be deemed to arise from sources in that other State.

Article 22

NON DISCRIMINATION

(1) Nationals of a Contracting State shall not be subjected in the other Contracting 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, in particular with respect to residence, are or may be subjected.

(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) Except where the provisions of paragraph 1 of Article 9, paragraph 5 of Article 11, paragraph 4 of Article 12, or paragraph 5 of Article 20 apply, interest, royalties and other disbursements paid by an enterprise of a Contracting State to a resident of the other Contracting State shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first mentioned State.

(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 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.

(6) Nothing contained in this Article shall be construed as obliging either Contracting State to grant to individuals not resident in that State any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals so resident or to its nationals.

Article 23

MUTUAL AGREEMENT PROCEDURE

(1) Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 22, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Convention.

(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 a satisfactory 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 which is not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

(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. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

(4) The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

(5) Where,

(a) under paragraph 1, a person has presented a case to the competent authority of a Contracting State on the basis that the actions of one or both of the Contracting States

have resulted for that person in taxation not in accordance with the provisions of this Convention, and

(b) the competent authorities are unable to reach an agreement to resolve that case pursuant to paragraph 2 within two years from the presentation of the case to the competent authority of the other Contracting State,

any unresolved issues arising from the case shall be submitted to arbitration if the person so requests. These unresolved issues shall not, however, be submitted to arbitration if a decision on these issues has already been rendered by a court or administrative tribunal of either State. Unless a person directly affected by the case does not accept the mutual agreement that implements the arbitration decision, that decision shall be binding on both Contracting States and shall be implemented notwithstanding any time limits in the domestic laws of these States. The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of this paragraph.

(6) The provisions of paragraph 5 shall not apply to cases falling within paragraph 4 of Article 4 of this Convention.

Article 24

EXCHANGE OF INFORMATION

(1) The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Convention or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Convention. The exchange of information is not restricted by Articles 1 and 2.

(2) Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

(3) In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

(4) If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

(5) In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial

institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

Article 25

ASSISTANCE IN THE COLLECTION OF TAXES

(1) The Contracting States shall lend assistance to each other in the collection of revenue claims. This assistance is not restricted by Articles 1 and 2. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

(2) The term "revenue claim" as used in this Article means an amount owed in respect of taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to this Convention or any other instrument to which the Contracting States are parties, as well as interest, administrative penalties and costs of collection or conservancy related to such amount.

(3) When a revenue claim of a Contracting State is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of collection by the competent authority of the other Contracting State. That revenue claim shall be collected by that other State in accordance with the provisions of its laws applicable to the enforcement and collection of its own taxes as if the revenue claim were a revenue claim of that other State.

(4) When a revenue claim of a Contracting State is a claim in respect of which that State may, under its law, take measures of conservancy with a view to ensure its collection, that revenue claim shall, at the request of the competent authority of that State, be accepted for purposes of taking measures of conservancy by the competent authority of the other Contracting State. That other State shall take measures of conservancy in respect of that revenue claim in accordance with the provisions of its laws as if the revenue claim were a revenue claim of that other State even if, at the time when such measures are applied the revenue claim is not enforceable in the first-mentioned State or is owed by a person who has a right to prevent its collection.

(5) Notwithstanding the provisions of paragraphs 3 and 4, a revenue claim accepted by a Contracting State for purposes of paragraph 3 or 4 shall not in that State, be subject to the time limits or accorded any priority applicable to a revenue claim under the laws of that State by reason of its nature as such. In addition, a revenue claim accepted by a Contracting State for the purposes of paragraph 3 or 4 shall not, in that State, have any priority applicable to that revenue claim under the laws of the other Contracting State.

(6) Proceedings with respect to the existence, validity or the amount of a revenue claim of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

(7) Where, at any time after a request has been made by a Contracting State under paragraph 3 or 4 and before the other Contracting State has collected and remitted the relevant revenue claim to the first-mentioned State, the relevant revenue claim ceases to be

(a) in the case of a request under paragraph 3, a revenue claim of the first-mentioned State that is enforceable under the laws of that State and is owed by a person who, at that time, cannot, under the laws of that State, prevent its collection; or

(b) in the case of a request under paragraph 4, a revenue claim of the first-mentioned State in respect of which that State may, under its laws, take measures of conservancy with a view to ensure its collection

the competent authority of the first-mentioned State shall promptly notify the competent authority of the other State of that fact and, at the option of the other State, the first- mentioned State shall either suspend or withdraw its request.

(8) In no case shall the provisions of this Article be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to carry out measures which would be contrary to public policy (ordre public);

(c) to provide assistance if the other Contracting State has not pursued all reasonable measures of collection or conservancy, as the case may be, available under its laws or administrative practice;

(d) to provide assistance in those cases where the administrative burden for that State is clearly disproportionate to the benefit to be derived by the other Contracting State;

(e) to provide administrative assistance if and insofar as it considers the taxation of the applicant State to be contrary to the generally accepted taxation principles or to the provisions of a convention for the avoidance of double taxation, or of any other convention which the requested State has concluded with the applicant State.

Article 26

MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS

Nothing in this Convention shall affect the fiscal privileges of members of diplomatic missions or consular posts under the general rules of international law or under the provisions of special agreements.

Article 27

LIMITATION OF RELIEF

(1) Notwithstanding the other provisions of this Convention, a benefit under this Convention shall not be granted in respect of an item of income or a capital gain if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Convention.

(2) Where under any provision of this Convention income or gains are relieved from tax in a Contracting State and, under the law in force in the other Contracting State, a person, in respect of that income or those gains, is subject to tax by reference to the amount thereof which is remitted to or received in that other State and not by reference to the full amount thereof, then the relief to be allowed under this Convention in the first-mentioned State shall apply only to so much of the income or gains as is taxed in the other State.

Article 28

ENTRY INTO FORCE

(1) Each of the Contracting States shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Convention. This Convention shall enter into force on the date of the later of these notifications and shall thereupon have effect:

(a) in Austria, in respect of Austrian taxes, for any fiscal year beginning on or after 1st January next following the date on which this Convention enters into force;

(b) in the United Kingdom:

(i) 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 this Convention enters into force;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which this Convention enters into force:

(c) in both Contracting States, in respect of cases falling within paragraph 5 of Article 23 two years after the date upon which this Convention enters into force.

(2) The Convention between the United Kingdom of Great Britain and Northern Ireland and Austria for the avoidance of double taxation with respect to taxes on income, signed at London on 30th April 1969, as amended (the 1969 Convention), shall cease to have effect in respect of any tax with effect from the date upon which this Convention has effect in respect of that tax in accordance with the provisions of paragraph 1 of this Article and shall terminate on the last such date.

(3) Notwithstanding the provisions of paragraph 2 an individual who is entitled to the benefits of Article 21 of the 1969 Convention at the time of entry into force of this Convention shall continue to be entitled to such benefits as if the 1969 Convention had remained in force.

Article 29

TERMINATION

This Convention shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Convention, through diplomatic channels, by giving written notice of termination at least six months before the end of any calendar year beginning after the expiry of five years from the date of entry into force of this Convention. In such event, the Convention shall cease to have effect:

(a) in Austria, in respect of Austrian taxes, for any fiscal year beginning on or after 1st January next following the date on which the notice is given;

(b) in the United Kingdom:

(i) 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 notice is given;

(ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date on which the notice is given.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Convention.

DONE in duplicate at Vienna this 23rd day of October 2018 in the German and English languages, each text being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:	For the Republic of Austria:
Leigh Turner	Johannes Peterlik

PROTOCOL

At the moment of signing the Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and on capital gains, this day concluded between the United Kingdom of Great Britain and Northern Ireland and the Republic of Austria, the undersigned have agreed that the following provisions shall form an integral part of the Convention.

1. With reference to paragraph 2 of Article 11 (Interest)

It is understood that the term “interest” does not include any item which is treated as a dividend under the provisions of Article 10.

2. With reference to Article 11 (Interest)

Notwithstanding the provisions of Article 11 of the Convention, interest may be taxed in the Contracting States in which it arises, and according to the law of that State,

(a) if it is derived from debt-claims carrying a right to participate in profits, including income derived by a silent partner ("stiller Gesellschafter") from his participation as such, or from a loan with an interest rate linked to borrower's profit ("partiarisches Darlehen") or from profit sharing bonds ("Gewinnobligationen") within the meaning of the tax law of Austria; and

(b) under the condition that it is deductible in the determination of profits of the debtor.

3. With reference to paragraph 3 of Article 16 (Artistes and Sportsmen)

It is understood that paragraph 3 shall also apply to legal entities which are, or operate, orchestras, theatres, ballet groups as well as to members of such cultural entities if such legal entities are generally non-profit entities and if this is certified by the Competent Authority of the State of which the entity is a resident.

4. With reference to paragraph 4 of Article 20 (Other Income)

(a) For the purposes of paragraph 4 such income shall also include payment for damage resulting from crimes, vaccinations or similar reasons.

(b) The income mentioned in this paragraph shall not be taken into consideration when applying the exemption with progression method.

5. With reference to Articles 23 (Mutual Agreement Procedure) and 25 (Assistance in the Collection of Taxes)

It is understood that the provisions of Articles 23 and 25 shall have effect from the date of entry into force of the Convention without regard to the taxable or chargeable period to which the matter refers.

6. With reference to Article 24 (Exchange of Information)

(a) The competent authority of the applicant State shall provide the following information to the competent authority of the requested State when making a request for information under the Convention to demonstrate the foreseeable relevance of the information to the request:

(i) the identity of the person under examination or investigation;

(ii) a statement of the information sought including its nature and the form in which the applicant State wishes to receive the information from the requested State;

(iii) the tax purpose for which the information is sought;

(iv) grounds for believing that the information requested is held in the requested State or is in the possession or control of a person within the jurisdiction of the requested State;

(v) to the extent known, the name and address of any person believed to be in possession of the requested information;

(vi) a statement that the applicant State has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

(b) It is understood that the standard of 'foreseeable relevance' is intended to provide for exchange of information in tax matters to the widest possible extent and, at the same time, to clarify that Contracting States are not at liberty to engage in 'fishing expeditions' or to request information that is unlikely to be relevant to the tax affairs of a given taxpayer.

7. Interpretation of the Convention

(a) It is understood that provisions of the Convention which are drafted according to the corresponding provisions of the OECD Model Convention on Income and on Capital shall generally be expected to have the same meaning as expressed in the OECD Commentaries thereon as they may be revised from time to time. The understanding in the preceding sentence will not apply with respect to the following:

(i) observations to the OECD Commentaries maintained by either Contracting State other than observations made after the signature of this Convention on Commentaries that existed before its signature;

(ii) any contrary interpretations in this Protocol;

(iii) any contrary interpretation in a published explanation by one of the Contracting States that has been provided to the competent authority of the other Contracting State before the signature of the Convention;

(iv) any contrary interpretation agreed by the competent authorities after signature of the Convention.

The OECD Commentaries – as they may be revised from time to time – constitute a means of interpretation in the sense of the Vienna Convention of 23 May 1969 on the Law of Treaties.

(b) Improper use of this Convention

Having regard to the Commentary to Article 1 of the OECD Model Convention on Income and on Capital on "Improper use of the Convention" (as it may be revised from time to time), it is understood that this Convention shall not be interpreted to mean that a Contracting State is prevented from applying its domestic legal provisions on the prevention of tax evasion or tax avoidance where those provisions are used to challenge arrangements which constitute an abuse of the Convention.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Vienna this 23rd day of October 2018 in the English and German languages, each text being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:	For the Republic of Austria:
Leigh Turner	Johannes Peterlik

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to the Order contains a Convention and Protocol ("the Arrangements") between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Austria dealing with the avoidance of double taxation and the prevention of tax evasion and avoidance. The 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.

The Arrangements will take effect as follows:

(a) in Austria, in respect of Austrian taxes for any fiscal year beginning on or after 1st January next following the date of entry into force of the Arrangements,

(b) in the United Kingdom:

  (i) in respect of income tax and capital gains tax, for any year of assessment beginning on or after 6th April next following the date of entry into force of the Arrangements; and

  (ii) in respect of corporation tax, for any financial year beginning on or after 1st April next following the date of entry into force of the Arrangements.

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 the Order as it gives effect to a double taxation agreement. Double taxation agreements impose no obligations on taxpayers, rather they seek to eliminate double taxation and fiscal evasion.

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£6.90

UK201811301015 12/2018 19585

http://www.legislation.gov.uk/id/ukdsi/2018/9780111175828

ISBN 978-0-11-117582-8

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