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## UK/US limitation on benefits provision

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

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Signed on July 24, 2001

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## ARTICLE 23

### Limitation on Benefits

- 1) Except as otherwise provided in this Article, a resident of a Contracting State that derives income, profits or gains from the other Contracting State shall be entitled to all the benefits of this Convention otherwise accorded to residents of a Contracting State only if such resident is a “qualified person” as defined in paragraph 2 of this Article and satisfies any other specified conditions for the obtaining of such benefits.
- 2) A resident of a Contracting State is a qualified person for a taxable or chargeable period only if such resident is either:
  - a) an individual;
  - b) a qualified governmental entity;
  - c) a company, if
    - i) the principal class of its shares is listed or admitted to dealings on a recognized stock exchange specified in clauses (i) or (ii) of sub-paragraph a) of paragraph 7 of this Article and is regularly traded on one or more recognized stock exchanges, or
    - ii) shares representing at least 50 per cent. of the aggregate voting power and value of the company are owned directly or indirectly by five or fewer companies entitled to benefits under clause (i) of this sub-paragraph, provided that, in the case of indirect ownership, each intermediate owner is a resident of either Contracting State;
  - d) a person other than an individual or a company, if:
    - i) the principal class of units in that person is listed or admitted to dealings on a recognized stock exchange specified in clauses (i) or (ii) of subparagraph a) of paragraph 7 of this Article and is regularly traded on one or more recognized stock exchanges, or
    - ii) the direct or indirect owners of at least 50 per cent. of the beneficial interests in that person are qualified persons by reason of clause (i) of subparagraph c) or clause (i) of this sub-paragraph;
  - e) a person described in sub-paragraph a), b) or c) of paragraph 3 of Article 4 (Residence) of this Convention, provided that, in the case of a person described in subparagraph a) or b) of that paragraph, more than 50 per cent. of the person’s beneficiaries, members or participants are individuals who are residents of either Contracting State;
  - f) a person other than an individual, if:
    - i) on at least half the days of the taxable or chargeable period persons that are qualified persons by reason of sub-paragraphs a), b), clause (i) of subparagraph c), clause (i) of sub-paragraph d), or subparagraph e) of this paragraph own, directly or indirectly, shares or other beneficial interests representing at least 50 per cent. of the aggregate voting power and value of the person, and

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- ii) less than 50 per cent. of the person's gross income for that taxable or chargeable period is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible for the purposes of the taxes covered by this Convention in the State of which the person is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank located in one of the Contracting States); or
- g) a trust or trustee of a trust in their capacity as such if at least 50 per cent. of the beneficial interest in the trust is held by persons who are either:
  - i) qualified persons by reason of sub-paragraphs a), b), clause (i) of subparagraph c), clause (i) of subparagraph d), or sub-paragraph e) of this paragraph; or
  - ii) equivalent beneficiaries, provided that less than 50 per cent. of the gross income arising to such trust or trustee in their capacity as such for the taxable or chargeable period is paid or accrued, directly or indirectly, to persons who are not residents of either Contracting State in the form of payments that are deductible for the purposes of the taxes covered by this Convention in the Contracting State of which that trust or trustee is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank located in one of the Contracting States).
- 3) Notwithstanding that a company that is a resident of a Contracting State may not be a qualified person, it shall be entitled to the benefits of this Convention otherwise accorded to residents of a Contracting State with respect to an item of income, profit or gain if it satisfies any other specified conditions for the obtaining of such benefits and:
  - a) shares representing at least 95 per cent. of the aggregate voting power and value of the company are owned, directly or indirectly, by seven or fewer persons who are equivalent beneficiaries; and
  - b) less than 50 per cent. of the company's gross income for the taxable or chargeable period in which the item of income, profit or gain arises is paid or accrued, directly or indirectly, to persons who are not equivalent beneficiaries, in the form of payments that are deductible for the purposes of the taxes covered by this Convention in the State of which the company is a resident (but not including arm's length payments in the ordinary course of business for services or tangible property and payments in respect of financial obligations to a bank, provided that where such a bank is not a resident of a Contracting State such payment is attributable to a permanent establishment of that bank located in one of the Contracting States).
- 4)
  - a) Notwithstanding that a resident of a Contracting State may not be a qualified person, it shall be entitled to the benefits of this Convention with respect to an item of income, profit or gain derived from the other Contracting State, if the resident is engaged in the active conduct of a trade or business in the first-mentioned State (other than the business of making or managing investments for the resident's own account, unless these activities are banking, insurance or securities activities carried on by a bank, insurance company or registered securities dealer), the income, profit or gain derived from the other Contracting State is derived in connection with, or is incidental to, that trade or business and that resident satisfies any other specified conditions for the obtaining of such benefits.

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- b) If a resident of a Contracting State or any of its associated enterprises carries on a trade or business activity in the other Contracting State which gives rise to an item of income, profit or gain, sub-paragraph a) of this paragraph shall apply to such item only if the trade or business activity in the first-mentioned State is substantial in relation to the trade or business activity in the other State. Whether a trade or business activity is substantial for the purposes of this paragraph shall be determined on the basis of all the facts and circumstances.
  - c) In determining whether a person is engaged in the active conduct of a trade or business in a Contracting State under sub-paragraph a) of this paragraph, activities conducted by a partnership in which that person is a partner and activities conducted by persons connected to such person shall be deemed to be conducted by such person. A person shall be connected to another if one possesses at least 50 per cent. of the beneficial interest in the other (or, in the case of a company, shares representing at least 50 per cent. of the aggregate voting power and value of the company or of the beneficial equity interest in the company) or another person possesses, directly or indirectly, at least 50 per cent. of the beneficial interest (or, in the case of a company, shares representing at least 50 per cent. of the aggregate voting power and value of the company or of the beneficial equity interest in the company) in each person. In any case, a person shall be considered to be connected to another if, on the basis of all the facts and circumstances, one has control of the other or both are under the control of the same person or persons.
- 5) Notwithstanding the preceding provisions of this Article, if a company that is a resident of a Contracting State, or a company that controls such a company, has outstanding a class of shares:
- a) which is subject to terms or other arrangements which entitle its holders to a portion of the income, profit or gain of the company derived from the other Contracting State that is larger than the portion such holders would receive in the absence of such terms or arrangements; and
  - b) 50 per cent. or more of the voting power and value of which is owned by persons who are not equivalent beneficiaries, the benefits of this Convention shall apply only to that proportion of the income which those holders would have received in the absence of those terms or arrangements.
- 6) A resident of a Contracting State that is neither a qualified person nor entitled to benefits with respect to an item of income, profit or gain under paragraph 3 or 4 of this Article shall, nevertheless, be granted benefits of this Convention with respect to such item if the competent authority of the other Contracting State determines that the establishment, acquisition or maintenance of such resident and the conduct of its operations did not have as one of its principal purposes the obtaining of benefits under this Convention. The competent authority of the other Contracting State shall consult with the competent authority of the first-mentioned State before refusing to grant benefits of this Convention under this paragraph.
- 7) For the purposes of this Article the following rules and definitions shall apply:
- a) the term “recognized stock exchange” means:
    - i) the NASDAQ System and any stock exchange registered with the US Securities and Exchange Commission as a national securities exchange under the US Securities Exchange Act of 1934;
    - ii) the London Stock Exchange and any other recognised investment exchange within the meaning of the Financial Services Act 1986 or, as the case may be, the Financial Services and Markets Act 2000;
    - iii) the Irish Stock Exchange, the Swiss Stock Exchange and the stock exchanges of Amsterdam, Brussels, Frankfurt, Hamburg, Johannesburg, Madrid, Milan, Paris, Stockholm, Sydney, Tokyo, Toronto and Vienna; and
    - iv) any other stock exchange which the competent authorities agree to recognise for the purposes of this Article;

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- b)
- i) the term “principal class of shares” means the ordinary or common shares of the company, provided that such class of shares represents the majority of the voting power and value of the company. If no single class of ordinary or common shares represents the majority of the aggregate voting power and value of the company, the “principal class of shares” is that class or those classes that in the aggregate represent a majority of the aggregate voting power and value of the company;
  - ii) the term “shares” shall include depository receipts thereof or trust certificates thereof;
- c) the term “units” as used in sub-paragraph d) of paragraph 2 of this Article includes shares and any other instrument, not being a debt-claim, granting an entitlement to share in the assets or income of, or receive a distribution from, the person. The term “principal class of units” means the class of units which represents the majority of the value of the person. If no single class of units represents the majority of the value of the person, the “principal class of units” is 29 those classes that in the aggregate represent the majority of the value of the person;
- d) an equivalent beneficiary is a resident of a Member State of the European Community or of a European Economic Area state or of a party to the North American Free Trade Agreement but only if that resident:
- i) A) would be entitled to all the benefits of a comprehensive convention for the avoidance of double taxation between any Member State of the European Community or a European Economic Area state or any party to the North American Free Trade Agreement and the Contracting State from which the benefits of this Convention are claimed, provided that if such convention does not contain a comprehensive limitation on benefits article, the person would be a qualified person under paragraph 2 of this Article (or for the purposes of sub-paragraph g) of paragraph 2, under the provisions specified in clause (i) of that sub-paragraph) if such person were a resident of one of the Contracting States under Article 4 (Residence) of this Convention; and  
B) with respect to income referred to in Article 10 (Dividends), 11 (Interest) or 12 (Royalties) of this Convention, would be entitled under such convention to a rate of tax with respect to the particular class of income for which benefits are being claimed under this Convention that is at least as low as the rate applicable under this Convention; or
  - ii) is a company resident in a Member State of the European Community which is entitled under the provisions of any Directive of the European Community to receive the particular class of income for which benefits are being claimed under this Convention free of withholding tax.
- e) For the purposes of paragraph 2 of this Article, the shares in a class of shares or the units in a class of units are considered to be regularly traded on one or more recognized stock exchanges in a chargeable or taxable period if the aggregate number of shares or units of that class traded on such stock exchange or exchanges during the twelve months ending on the day before the beginning of that taxable or chargeable period is at least six per cent. of the average number of shares or units outstanding in that class during that twelve-month period.
- f) A body corporate or unincorporated association shall be considered to be an insurance company if its gross income consists primarily of insurance or reinsurance premiums and investment income attributable to such premiums.

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