
Chapter 24

United Kingdom

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24.1. Tax provisions of the Vienna Convention on Diplomatic Relations and of the Vienna Convention on Consular Relations (including bilateral consular agreements)

24.1.1. The Vienna Convention on Diplomatic Relations 1961¹

24.1.1.1. General comments

The United Kingdom adheres strictly to a “dualist” doctrine with respect to the implementation of treaties in domestic law. According to this doctrine, a treaty, whether multilateral or bilateral and whatever the name given to it,² has no effect in UK domestic law, unless and until it is given effect, either directly by an Act of Parliament or indirectly by subordinate legislation (statutory instrument) made under powers contained in an Act of Parliament. Courts in the United Kingdom will not give effect to any provision in a treaty or other agreement which has not been incorporated into domestic law in this way. The instrument by which effect is given to a treaty in domestic law will, therefore, be considered in this chapter as well as the treaty itself.

Certain articles of the Vienna Convention on Diplomatic Relations (VCDR) have been given effect in UK domestic law by section 2(1) of, and Schedule 1 to, the Diplomatic Privileges Act 1964 (DPA).³ The articles in question are articles 1 (containing definitions), 22 to 24, 27, 29 and 40 and 45.⁴ Provisions containing exemptions from “dues and taxes” are to be found in articles 23, 28 and 34, and from “customs duties, taxes and other charges” in article 36 and are extended by articles 37 and 38. Article 38 also qualifies

1. *Vienna Convention on Diplomatic Relations* (18 Apr. 1961) United Nations *Treaty Series* Vol. 500, p. 95 [hereinafter VCDR].

2. E.g. treaty, convention, agreement, protocol or exchange of notes.

3. 1964 ch. 81.

4. Inserted by the Diplomatic and Consular Premises Act 1987 (ch. 46) sec. 6, sch. 2 para. 1.

those exemptions in relation to persons who are nationals of, or permanent residents in, the receiving state.

The definitions in article 1 are essential to an understanding of the articles containing exemptions. Those which are relevant to tax exemptions are in paragraphs (a) to (i) of article 1 and further definitions for the purposes of construing those articles in domestic law are contained in section 2 of the DPA. In particular, subsection (2) requires “national of the receiving State” to be construed as meaning “citizen of the United Kingdom and Colonies”⁵ and subsection (5A)⁶ requires the reference to customs duties in article 36 to be construed as including a reference to excise duties chargeable on goods imported into the United Kingdom and to value added tax (VAT) charged in accordance with section 10 or 15 of the Value Added Tax Act 1994⁷ (acquisitions from other Member States and importations from outside the European Community).

Articles 23, 28, 34, 37 and 29, which are the substantive articles containing tax exemptions to which effect was given in domestic law by section 2(1) of the DPA, will now be considered in turn. As part of that consideration reference will be made to two main sources: first, to the official manuals published by HM Revenue and Customs (HMRC), the government department responsible for the administration of all national taxes; and, secondly, to the most comprehensive manual published in the United Kingdom on diplomatic law by Professor Eileen Denza of University College, London,⁸ who was formerly a Legal Counsellor at the UK Foreign and Commonwealth Office (FCO). Professor Denza explains in her manual that there is a memorandum on UK practice in relation to privileges and immunities issued by the FCO to every diplomatic mission in the United Kingdom (the FCO Memorandum).

5. By virtue of the British Nationality Act 1981 (ch. 61), sec. 11, citizens of the United Kingdom and Colonies with the right of abode in the United Kingdom became British citizens on the commencement of the Act. Other citizens of the United Kingdom and Colonies became British Dependent Territories citizens and British Overseas citizens. All British Dependent Territories citizens (except those who became British Nationals (Overseas) by virtue of the Hong Kong (British Nationality) Order 1986 (S.I. 1986/948), art. 8, Sch) were renamed British overseas territories citizens by the British Overseas Territories Act 2002 (ch. 8), sec. 1 and, with the exception of those who were British overseas territories citizens by virtue of their connection with the Sovereign Base Areas of Akrotiri and Dhekelia (in Cyprus), became British citizens by the British Overseas Territories Act 2002 (ch. 8), sec. 2.

6. Inserted by Customs and Excise Management Act 1975 (ch. 2) sec. 177(1), sch. 4 para. 3 and amended by Finance (No. 2) Act 1992 (ch. 48) sec. 14(2), sch. 3 para. 87; S.I. 1992/3261, art. 3, sch.

7. 1994 ch. 23.

8. E. Denza, *Diplomatic Law: Commentary on the Vienna Convention on Diplomatic Relations* (Oxford: Oxford Commentaries on International Law, 2008, 3rd ed.).

Extracts from this memorandum are printed in various places in Professor Denza's manual and references in this chapter to the FCO Memorandum are to those extracts.

24.1.1.2. Article 23

The "national, regional or municipal dues and taxes" referred to in paragraph 1 of the article, which might be levied in the United Kingdom in respect of the premises of a mission, including the residence of the head of the mission, are stamp duty land tax (SDLT), which is payable on the acquisition of a chargeable interest in land in the United Kingdom⁹ and non-domestic rates, which are primarily payable by the occupier of premises, other than residential premises, to the local authority in which the premises are situated.¹⁰

24.1.1.2.1. *SDLT*

The HMRC manual on SDLT states¹¹ that relief from SDLT is available on the purchase or lease of premises of a diplomatic mission or the official residence of the "head of mission", by virtue of the incorporation of articles 23 and 24 of the VCDR as schedule 1 to the Diplomatic Privileges Act 1968. However, it points out, correctly,¹² that the relief does not apply to the purchase or lease of the private residence of a diplomat.

24.1.1.2.2. *Non-domestic rates*

The restriction of the exemption in article 23(1) to dues and taxes that do not represent specific payment for services can give rise to problems in its practical application, where the tax in question represents payment for services provided by a local authority. While historically the United Kingdom resisted the notion that diplomatic practice provided for exemption from rates at all, it has more recently taken the position that payment is only required for services that are of benefit to the mission.¹³ However, even

9. Finance Act 2003 (ch. 14) Part 4, secs. 42 to 124 and see HMRC Manual SDLTM00030 et seq. SDLT was substituted for stamp duty payable on documents transferring interests in land with effect from 1 December 2003 by virtue of article 2 of the Stamp Duty Land Tax (Appointment of the Implementation Date) Order 2003 (S.I. 2003/2899 (C. 106)) made under sec. 124 and sch. 19 Finance Act 2003.

10. General Rate Act 1967 (ch. 9).

11. HMRC Stamp Duty Land Tax Manual SDLTM20500 – *Reliefs*.

12. See art. 34(f).

13. Denza, *supra* n. 8, at 182.

with that qualification, some questions remain. Do the services in question have to provide a direct benefit to the mission or are they still payable when the benefit is to the local community as whole and, in so far as they are of benefit to the local community generally, should the mission be required to pay for them? For example, non-domestic rates represent payment partly for services from which the mission benefits directly, such as refuse collection, street lighting and maintenance, partly for services from which it benefits along with the remainder of the local community, such as police and fire services, and partly for services from which the mission benefits remotely, if at all, such as the administration of planning laws and the provision of education and welfare services.

Professor Denza records¹⁴ that under the arrangements set out in the 1996 version of the FCO Memorandum, “the non-beneficial portion includes such services as education, police, housing and welfare services while the beneficial portion covers street cleaning, lighting and maintenance, fire services, parks, public libraries and museums.”

Police services were placed in the “non-beneficial” category not because the mission was deemed to derive no direct benefit from them but because of the duty imposed on the receiving state under article 22 to protect mission premises. On the basis set out in the FCO Memorandum, it was determined that 14% of non-domestic rates were payable by missions.

However, Professor Denza goes on to record¹⁵ that following a comprehensive review in 1996, the FCO informed missions “that henceforth beneficial services will comprise only lighting, maintenance and cleaning of local highways and streets and the provision of fire services.” In consequence, missions would be liable to 6% instead of 14% of normal rates. The test applied was one of direct benefit to the mission as distinct from the members of the mission from the services in question and parks, museums and libraries were considered to be of benefit to individuals rather than the mission.

The writer has two comments on the present policy of the United Kingdom. The first is that it is difficult to see why the duty under article 22 to protect the premises of the mission from damage does not also include a duty to protect them from damage by fire. Secondly, it seems a curious omission that the collection of refuse from the premises of the mission is not included among the beneficial services.

14. *Id.*, at 186.

15. *Id.*, at 187.

In relation to article 23(2), Professor Denza comments:¹⁶

Paragraph 2 of article 23 was added at the Vienna Convention by an amendment proposed by Mexico in order to put beyond doubt that the exemption from rates, taxes and transfer duties did not apply to persons who leased or sold embassy premises to the sending State. This reflected general international practice and the intentions of the International Law Commission. Landlords may, of course, specify in a lease that rates or taxes which would normally fall on them should instead be defrayed by the mission. In this case, as the Commission stated in its Commentary on the 1958 draft articles, the liability ‘becomes part of the consideration given for the use of the premises and usually involves, in effect, not the payment of taxes as such, but an increase in the rental payable’. If, however, the effect of an agreement between landlord and a State or diplomat renting mission premises is that, under national law, liability for the rates or taxes would fall directly on the State or on the diplomat, the sending State may take advantage in those circumstances of its exemption under article 23.¹⁷

The situation may also arise where the inability of the tax or rating authority to collect the tax or rates from the occupier of rented property means that liability falls by law on the landlord. In such circumstances, it seems that the landlord is not able to claim the protection of article 23(2).

24.1.1.3. Article 28

With the possible exception of VAT, it does not appear that there are any UK taxes which, apart from this article, would be charged on fees and charges levied by the mission in the course of its official duties. The mission is not carrying on a trade or business and so would not be chargeable to corporation tax on any “profit” that it made from carrying out such duties.

24.1.1.4. Articles 34, 37 and 39

24.1.1.4.1. *Beneficiaries of the articles*

Article 34 of the VCDR provides for the exemption of diplomatic agents from all dues and taxes subject to the exemptions and the exceptions set out

16. *Id.*, at 184.

17. Professor Denza’s view that article 23 did not prevent a landlord increasing the rent payable by a diplomatic mission in order to defray his liability to rates and taxes was supported by the judgment of the Court of Justice of the European Community (ECJ) in the context of a similar exemption in the Protocol on the Privileges and Immunities of the European Community for Community premises in ECJ, 22 Mar. 2007, Case C-437/04, *Commission v. Kingdom of Belgium* [2007], ECR I-2513. See section 24.7.2. below.

in paragraphs (a) to (f) of that article. The definition of “diplomatic agent” in article 1 includes head of the mission and members of the staff of the mission having diplomatic rank. Article 37(1) extends this exemption to the members of the family of a diplomatic agent forming part of his household if they are not nationals of the receiving state and article 37(2) extends the exemption to members of the administrative and technical staff of the mission, together with members of their families forming part of their respective households, provided they are not nationals of or permanently resident in the receiving state.

Article 37(3) and (4) provides additionally that the service staff of the mission (the members of the staff of the mission in the domestic service of the mission),¹⁸ and the private servants of the members of the mission, are entitled to exemption only from dues and taxes on the emoluments they receive by reason of their employment, again provided they are not nationals of or permanently resident in the receiving state.

Finally, article 39(4) provides that the heirs and estates of members of the mission (i.e. all employees of the mission except private servants) and of members of their families are exempt from estate, succession and inheritance duties in respect of movable property, the presence of which in the receiving state was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission. The question arises whether the exemption contained in the second sentence of article 39(4) applies only to members of the mission and members of their families who are neither nationals of, nor permanently resident in, the United Kingdom. The first sentence of article 39(4), which, subject to an exception for prohibited exports, permits the withdrawal of movable property on the death of a member of the mission, or of a member of his family forming part of his household, is so limited and it can perhaps be inferred that this qualification applies to the exemption in the second sentence, even though it is not specifically stated¹⁹

One way or the other, therefore, some exemption from dues and taxes is available to all staff of the mission, even if it is only from the emoluments in respect of their employment. The most extensive exemption is available to the head of mission and staff members having diplomatic rank without further qualification, to members of their families who are not nationals of the receiving state and to members of the administrative and technical staff

18. See the definition in article 1.

19. Cf. the similarly worded provision in article 51 of the VCCR as governed by article 71. See 24.1.2.4.1. below.

and their families who are neither nationals of, nor permanently resident in, the receiving state.

As has been noted above, the term “national of the receiving State” is defined for the purposes of the DPA by section 2(2) as meaning “citizen of the United Kingdom and Colonies”.²⁰ The term “permanent resident” is not defined either in VCDR or in the DPA, but the HMRC guidance manual, presumably in reliance on FCO advice, defines such a person as “an individual who was living in the UK at the time of his appointment, or who has subsequently made his permanent home here”. The manual points out that the use of the term in relation to diplomatic privileges should not be confused with the concept of residence for tax purposes.²¹

24.1.1.4.2. *Scope of the exemption – Direct taxes*

The UK taxes from which exemption is given in principle by the opening words of article 34 are the direct taxes (income tax, capital gains tax and inheritance tax) and the indirect taxes (stamp duty land tax, stamp duty, value added tax and excise duties). However, the actual scope of the exemption available to staff of the mission, other than the service staff and private servants, can only be understood in a positive way by describing what remains after the exceptions in paragraphs (a) to (f) of article 34 are taken into account.

So far as the direct taxes are concerned, the HMRC guidance manual states²² that the exemption from income tax applies to the official emoluments of members of the mission and to private income from outside the United Kingdom. The manual notes that the exemption applies even if the income is payable in or remitted to the United Kingdom. On the other hand, the manual reflects paragraph (d) by pointing out that private income from sources within the United Kingdom does not rank for diplomatic privilege exemption in any case.

20. See *supra* n. 5.

21. HMRC Relief Instructions Manual RE2252 – *Foreign and Commonwealth diplomatic missions: conditions of exemption*.

22. HMRC Relief Instructions Manual RE2253 – *Foreign and Commonwealth diplomatic missions: exemptions from IT*.

In relation to capital gains tax, the manual states²³ that, with two exceptions, the exemption applies to the chargeable gains of the diplomatic, administrative and technical staff of the mission. The first exception stated (reflecting paragraph (b)) is that the exemption does not apply to chargeable gains that arise on the disposal of private immovable property not held on behalf of the sending state for the purposes of the mission and the second (reflecting paragraph (d)) is that it does not apply to investments in commercial undertakings in the United Kingdom.

In relation to inheritance tax, although article 34(c) appears to remove from the exemption in that article all estate, succession and inheritance duties levied by the receiving state, the effect of the words “subject to the provisions of paragraph 4 of article 39” is to provide exemption for movable property the presence of which in the receiving state was due solely to the presence there of the deceased as a member of the mission or as a member of the family of a member of the mission.

The HMRC guidance manual on inheritance tax states²⁴ the exemption in the second sentence of article 39(4) as applying only to a member of the mission who is not a national of, or permanently resident in, the United Kingdom and a member of his family forming part of his household. As mentioned above, this can probably be inferred from the first sentence of article 39(4) but is not explicitly stated in the second sentence. The manual also makes it clear that that the rule that a person becomes domiciled in the United Kingdom (and thus potentially within the charge to inheritance tax) after being resident in the United Kingdom for 17 years out of the last 20,²⁵ does not apply to a serving diplomat. However, it points out that a former diplomat who stays in the United Kingdom after retirement is subject to the rule in the normal way and his residence there during his years of service is not ignored. As regards inheritance tax on lifetime transfers (potentially exempt transfers), the manual states that tax can only be charged in respect of gifts of immovable property in the United Kingdom and of investments in commercial undertakings, presumably in reliance on the exceptions in article 34(c) and (d).

23. HMRC Relief Manual Instructions RE2254 – *Foreign and Commonwealth diplomatic missions: exemption from CGT*. See also HMRC Capital Gains Manual CG25201 – *Effects of residence and domicile: diplomatic immunity; visiting forces: EU officials etc.*

24. HMRC Inheritance Tax Manual IHTM11270 – *Exemptions: diplomatic and consular immunity*.

25. Inheritance Act 1984 (ch. 51), sec. 267(1)(b).

To conclude in relation to the direct taxes, the HMRC guidance manual states²⁶ that diplomatic privilege does not extend to pensions paid by reason of their diplomatic service to former diplomatic staff. This clearly follows from article 39(2) of the VCDR, which states that, when the functions of a person enjoying privileges and immunities have come to an end, such privileges and immunities cease at the moment when he leaves the country or on expiry of a reasonable period in which to do so. The manual also clarifies the position in relation to personal reliefs which may be set against the non-exempt tax liability of a diplomatic agent on his private income by stating that he may claim the reliefs appropriate to an individual resident in the United Kingdom.²⁷ However, nowhere does the manual state explicitly that the official emoluments of a diplomatic agent are not to be taken into account in determining the rate of tax payable on his private income from sources in the United Kingdom, though it is understood that it is the practice of HMRC not to take official emoluments into account.²⁸

24.1.1.4.3. *Scope of the exemption – Indirect taxes*

With regard to indirect taxes, the position in relation to stamp duty land tax has already been explained in connection with article 23. Article 34(f) makes it clear that diplomatic agents are not exempt from stamp duty with respect to immovable property, except when it consists of the premises of the mission, and paragraph (b) by implication exempts diplomatic agents from dues and taxes on immovable property, when it is held on behalf of the sending state for the purposes of the mission. There is also clearly no exemption for stamp duty on documents transferring stock and marketable securities when they constitute investments in commercial undertakings in the United Kingdom (article 34(d)), though exemption is presumably available in principle for stamp duty on transfers of investments in foreign undertakings executed in the United Kingdom.

The position with regard to VAT and excise taxes is quite clearly regulated by the exception in article 34(a). Professor Denza states²⁹ that:

26. HMRC Relief Instructions Manual RE2255 – *Foreign and Commonwealth diplomatic missions: Pensions*.

27. HMRC Relief Instructions Manual RE2263 – *Foreign and Commonwealth diplomatic missions: personal reliefs*.

28. HMRC practice is supported by the judgment of the Court of Justice of the European Coal and Steel Community in the context of article 11 of the Protocol on the Privileges and Immunities of the European Coal and Steel Community in ECJ 16 Dec. 1960, Case C- 6/60, *Humblet v. Belgian State* [1960], ECR 559. See 24.7.3. below.

29. Denza, *supra* n. 8, at 362.

The United Kingdom have [sic] always treated value added tax and excise duties levied on goods sold in the United Kingdom as “indirect taxes of a kind which are normally incorporated in the price of goods and services”, with the result that ... these taxes are payable by diplomats in the United Kingdom.

However, the HMRC guidance manual lists four examples of ways in which what it calls “diplomatic missions and entitled individuals” may, under specified conditions, reclaim VAT and excise taxes paid on purchases.³⁰ Professor Denza refers³¹ to these examples as *ex gratia* arrangements, though as will be seen at least one of them has a basis in United Kingdom domestic statute law.

The four examples listed in the manual are the purchase of motor vehicles, the withdrawal from a warehouse of alcohol and tobacco products, hydrocarbon oils and certain other limited entitlements as granted by the FCO. The conditions for repayment vary in each case. In the case of motor vehicles, the manual states³² that missions and their personnel may import, acquire, withdraw from a customs warehouse or purchase in the United Kingdom motor vehicles free of duty and VAT, subject to quotas imposed by the FCO but offers no further details as to those quotas. The same appears to be the case in relation to alcohol and tobacco products, as they are referred to in the manual as “rationed goods”³³ and the point is made that the goods must be consigned to an entitled mission and not for the personal use of members of the mission.

In relation to hydrocarbon oils, the manual states³⁴ that entitled missions are eligible to claim a refund of the import VAT, customs and excise duty paid on petrol, diesel and heating oil purchased in the United Kingdom, which is used for official purposes of the mission. In this case the use of the word “entitlement” seems to be correct, although the entitlement is not under VCDR but by virtue of section 1 of the Diplomatic and Other Privileges Act 1971.³⁵ The rationale for the claim appears from paragraph (b) of that section to be that, if the hydrocarbon oils had been imported rather than purchased in the United Kingdom, exemption from duty would have been required to be granted by virtue of article 36(1) or article 37(1) of the VCDR. The fourth

30. HMRC Diplomatic Privileges Manual DIPPRIV4200 – *Goods and services for the official use of entitled missions: Purchases made in the UK.*

31. Denza, *supra* n. 8, at 362.

32. HMRC Diplomatic Privileges Manual DIPPRIV6100 – *Motor Vehicles: Entitlement.*

33. DIPPRIV3800 – *Goods and services for the official use of entitled missions: Withdrawal of goods from a Customs warehouse.*

34. DIPPRIV3600 – *Goods and services for the official use of entitled missions: Refund of duty and VAT on hydrocarbon oil.*

35. 1971 ch. 64.

of the “ex gratia” reliefs, the “certain limited entitlements as granted by the FCO”, is explained in the manual as,³⁶ in the case of missions, a refund of VAT “on substantial purchases of high quality British made furniture for use either in the official Residence of the Ambassador or the reception rooms of the Embassy.”

Professor Denza explains³⁷ that such arrangements as these “are intended as an incentive to the purchase by diplomatic missions of local goods in preference to the duty-free import of foreign goods and they do not affect the legal position under which the amounts in question fall within article 34(a).”

24.1.1.5. Conclusion

The description in the preceding paragraph of the “ex gratia” exemptions from VAT and excise taxes granted to missions by the United Kingdom concludes the survey of the tax provisions of the VCDR, subject to two points that have not yet been mentioned. First, it should be recorded for completeness that, as mentioned above, missions and diplomatic agents are entitled to exemption under articles 36 and 37 VCDR from customs duties (which in relation to the United Kingdom include excise duties and VAT)³⁸ on articles imported for the official use of the mission or for the personal use of a diplomatic agent or members of his family forming part of his household.

Secondly, article 34(e) makes it clear that diplomatic agents, like the mission itself, are not exempt from dues and taxes which represent charges for services rendered. Whether any services are rendered for a particular charge can sometimes be a matter of contention between missions and host states. Road charges such as tolls for motorways and bridges are regarded as being close to the line and congestion charges that are imposed on motorists wishing to drive in the centre of certain cities, such as parts of central London, are regarded by many missions to the United Kingdom as being taxes rather than payment for services. There is a continuing dispute between Transport for London (the body responsible for administering the congestion charge in London) and some 64 missions headed by the mission of the United States about liability to pay the charge.³⁹

36. DIPPRIV9200 – *Appendices: Purchases in UK by Entitled Missions.*

37. Denza, *supra* n. 8, at 363.

38. See section 24.1.1.1. above.

39. See Denza, *supra* n. 8, at 370-373. According to the *London Evening Standard* of 21 July 2011, the amount owed by foreign diplomats in unpaid congestion charges and fines is now more than GBP 52 million. US diplomats head the list (owing GBP 5,478,120), followed by Russian (GBP 4,461,180), Japanese (GBP 3,767,580), German

24.1.2. The Vienna Convention on Consular Relations 1963⁴⁰

24.1.2.1. General comments

Effect is given in domestic UK law to the articles of the Vienna Convention on Consular Relations 1963 (VCCR) concerning taxation by the Consular Relations Act 1968 (CRA).⁴¹ The articles in question are contained in chapters II and III of the Convention, namely articles 32, 49, 50, 51 and 66, with exceptions from the privileges and immunities conferred by those articles set out in articles 58 and 71. As in the case of the VCDR, the definitions in article 1 are essential to an understanding of the extent of the privileges and immunities conferred by the remaining articles. The definitions in paragraphs (a) to (j) of the article are relevant to exemptions from taxation.

The effect of article 71 in chapter IV is that consular officers who are nationals of or permanently resident in the receiving State are not entitled to any of the privileges and immunities concerning taxation that are conferred on members of consular posts by the Convention. It is not clear whether the exemptions in article 66 and chapter II that will be considered below are all subject to this overriding rule but presumably they are. It is therefore necessary to be clear who are “nationals of the receiving State”. In relation to the United Kingdom, section 1(2) of the CRA (as amended by the British Nationality Act 1981⁴² and the Hong Kong (British Nationality) Order 1986)⁴³ requires “national of the receiving State” to be construed as having a similar meaning to that given by the Diplomatic Privileges Act 1964 (i.e. a citizen of the United Kingdom and colonies).⁴⁴ It also includes a person who is a British subject under the British Nationality Act 1981 or a British protected person within the meaning of that Act. Accordingly, and in contrast to the privileges and immunities in relation to taxation conferred by the VCDR, no such person may benefit from such privileges and immunities contained in the VCCR.

Article 66 in chapter III makes it clear that the only exemption from taxation that an honorary consular officer has is exemption from all dues and taxes on

(GBP 3,522,730) and Nigerian diplomats (GBP 2,788,950). US diplomats stopped paying in July 2006 when the charge was raised from GBP 5.00 to GBP 8.00 per day. The charge is now GBP 10.00 per day.

40. *Vienna Convention on Consular Relations* (24 Apr. 1963) United Nations *Treaty Series* Vol. 596, p. 261 [hereinafter VCCR].

41. 1968 ch. 18; sec. 1 and sch. 1.

42. 1981 ch. 61, sec. 52(6), sch. 7.

43. S.I. 1986/948, art. 8, sch.

44. But see *supra* n. 5.

the remuneration and emoluments which he receives from the sending state in respect of the exercise of consular functions. No privileges or immunities granted by chapter II are accorded to members of the family of an honorary consular officer or of a consular employee at a consular post headed by an honorary consular officer (article 58(3)).

There are also specific provisions of United Kingdom domestic tax legislation, currently re-enacted in sections 300 and 301 of the Income Tax (Earnings and Pensions) Act 2003 (ITEPA),⁴⁵ that provide exemptions for a consul (defined as being a consul-general, consul, vice-consul or consular agent) in the service of a foreign state and an official agent (defined as meaning a person who is not a consul but is employed on the staff of a consulate or official department or agency of a foreign state) from income tax in respect of income arising from his office or employment as such. The exemption in the case of an official agent is conditional on the employee being neither a Commonwealth citizen nor a citizen of the Republic of Ireland.

24.1.2.2. Article 32

There are minor differences of wording in article 32 compared with article 23 of the VCDR but these do not affect the extent of either the exemption or the exceptions from the exemption contained in the article. The exemption is conferred on the consular premises and the residence of the career head of consular post, rather than on the sending state and the head of the mission personally, and so the dues and taxes concerned are limited to those charged directly on the premises. However, it is doubtful whether any difference in effect was intended and it is suggested that, in the United Kingdom at least, there will be little difference in practice. Technically, non-domestic rates are charged on the “occupier” of business premises and stamp duty land tax is charged on the “purchaser” or “lessee”; but the HMRC guidance manual⁴⁶ on SDLT treats the exemptions in both articles as having identical effect.

24.1.2.3. Article 40

Article 40 is a slightly more elaborate version of the exemption in article 28 of the VCDR in that it includes receipts for fees and charges in the exemption

45. 2003 ch. 1. The same exemptions were previously provided by Income and Corporation Taxes Act 1988 (ch. 1), secs. 321 and 322, which itself consolidated earlier legislation having the same effect.

46. SDLTM20500 – *Reliefs*.

as well as the fees and charges themselves. However, the effect in the United Kingdom is no different, as it has no dues or taxes on receipts.

24.1.2.4. Articles 49, 51 and 57(2)

24.1.2.4.1. *Beneficiaries of the provisions*

The most extensive exemptions conferred by the VCCR are conferred by article 49(1) on consular officers and members of the administrative and technical staff of a consular post and their families. Subject to the exceptions in that article, such staff and their families are exempt from all dues and taxes, while service staff are only exempt from dues and taxes on their employment income under article 49(2). However, the width of the exemption in article 49(1) may be more apparent than real when the exceptions set out in paragraphs (a) to (f) are taken into consideration.

Article 51, which provides exemption from estate, succession and inheritance duties, and duties on transfers, applies to the estates of all members of the staff of a consular post. The ambiguity in the similarly worded article 39(4) of the VCDR⁴⁷ does not arise in relation to article 51, because article 71 makes it clear that none of the exemptions in chapter II apply to consular officers and members of the staff who are nationals of, or permanently resident in, the receiving state, unless that state grants them such exemptions.

Article 57(2) should also be noted as it provides that privileges and immunities provided in chapter II are not accorded to consular employees and their families who carry on private gainful occupations in the receiving state.

24.1.2.4.2. *Scope of the exemptions – Direct taxes*

As in the case of article 34 of the VCDR, the UK taxes from which exemption is given in principle by the opening words of the third sentence of article 49(1) of the VCCR are the direct taxes (income tax, capital gains tax and inheritance tax) and the indirect taxes (stamp duty land tax, stamp duties, value added tax and excise duties). Paragraphs (a) to (f) in that sentence, which limit the scope of the exemptions in article 49(1) are *mutatis mutandis* in identical terms to the equivalent paragraphs in article 34, save only for the addition of a reference to capital gains in paragraph (d).⁴⁸

47. See 24.1.1.4.1. above.

48. No doubt occasioned by the introduction of capital gains tax in the United Kingdom as a separate tax by Finance Act 1965 (ch.25) Part III.

So far as the direct taxes are concerned, the HMRC guidance manual states⁴⁹ that,

- [T]he income tax exemptions due to foreign consuls and their staffs apply to
- the official emoluments of career consular officers, honorary consular officers, consular employees and members of the service staff employed in the domestic service of the consular post
 - private income from outside the United Kingdom of career consular officers, consular employees in the administrative or technical service of the consular post and members of their families.

However, a feature of the VCCR that is not present in the VCDR is that it is explicitly stated in article 49(3) that members of the consular post who employ persons whose wages or salaries are not exempt from income tax in the receiving state must observe the obligations which the laws and regulations of that state impose upon employers concerning the levying of income tax. This is clearly a reference to domestic law administrative requirements for deduction of income tax at source in the case of employment income, such as the Pay As You Earn (PAYE) system in the United Kingdom. A typical example of a situation where PAYE obligations would be imposed by domestic law on a member of a consular post would be when the member employs a private domestic servant.

In relation to capital gains tax, the manual states⁵⁰ that, with two exceptions, the exemption applies to chargeable gains made by career consular officers and consular employees employed in the administrative or technical service of the consular post. The first exception (reflecting paragraph (b)) is that exemption does not apply to chargeable gains that arise on the disposal of private immovable property not held on behalf of the sending state for the purposes of the consulate or the residence of the career head of the consular post and the second (reflecting paragraph (d)) is that it does not apply to gains that arise on the disposal of investments in commercial undertakings in the United Kingdom.

In relation to inheritance tax, although paragraph (c) appears to remove from the exemption all estate, succession and inheritance duties levied by the receiving state, the effect of the words “subject to the provisions of paragraph (b) of article 51” is to provide exemption only for movable property the presence of which in the receiving state was due solely to the presence in

49. HMRC Relief Instructions Manual RE2301 – *Foreign consuls and their staffs: exemptions from Income Tax.*

50. HMRC Relief Instructions Manual RE2302 – *Foreign consuls and their staffs: exemption from capital gains tax.*

that state of the deceased as a member of the consular post or as a member of the family of a member of the consular post.

To conclude in relation to the direct taxes, the HMRC guidance manual states⁵¹ that no exemption is provided for any pension received by a consular officer or member of staff in respect of his former office. This clearly follows from article 53(3) which provides that, when the functions of a member of a consular post have come to an end, his privileges and immunities normally cease at the moment when the person concerned leaves the receiving state, or on the expiry of a reasonable time in which to do so, whichever is the sooner.

24.1.2.4.3. *Scope of the exemption – Indirect taxes*

Paragraph (f) in the third sentence of article 49(1) makes it clear by the reference to article 32 that the only exemption from stamp duty that was available was in relation to consular premises and the residence of the career head of consular post of which the sending state or any person acting on its behalf is the owner or lessee. Since the replacement of stamp duties on documents transferring interests in immovable property by SDLT, presumably an equivalent exemption now applies in relation to that tax.

The position with regard to VAT and excise taxes appears to be the same as in relation to the VCDR, in that paragraph (a) removes the possibility of any entitlement to exemption. However, it seems that HMRC operates the same *ex gratia* arrangements for consular posts as it does for diplomatic missions.⁵²

24.1.3. Bilateral consular conventions

The United Kingdom has entered into a number of bilateral consular conventions containing provisions granting privileges and immunities, which exist side by side with those in the VCCR. Most of these conventions date from the 1950s and the first half of the 1960s, though a few date from the 1970s. None has been entered into since 1985.⁵³

51. HMRC relief Instructions Manual RE2307 – *Foreign consuls and their staffs: Pensions*.

52. See 24.1.1.4.3. above.

53. The full list is: Austria (1960), Belgium (1961), Bulgaria (1968), Czechoslovakia (1975), Denmark (1962), Egypt (1985), France (1951), Germany (1956), Hungary (1971), Italy (1954), Japan (1964), Mexico (1954), Mongolia (1975), Norway (1951), Poland (1967), Romania (1968), Spain (1961), Sweden (1952), US (1951), USSR (1965) and Yugoslavia (1965).