

Draft Order laid in Council before the House of Commons under section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2010 No.

**CAPITAL GAINS TAX
CORPORATION TAX
INCOME TAX
INHERITANCE TAX
VALUE ADDED TAX**

The International Tax Enforcement (Anguilla) Order 2010

Made - - - - [date] [Month] 2010

At the Court at Buckingham Palace, the [date] day of [Month] 2010

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 173(7) of the Finance Act 2006⁽¹⁾ and approved by a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 173(1) 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 International Tax Enforcement (Anguilla) Order 2010.

Tax information exchange arrangements to have effect

2. It is declared that—
 - (a) the arrangements specified in the Exchange of Letters set out in Part 1 of the Schedule to this Order and in the arrangements set out in Part 2 of that Schedule have been made with the Government of Anguilla with a view to the exchange of information foreseeably

(1) 2006 c. 25.

relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the arrangements; and

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

Name
Clerk of the Privy Council

SCHEDULE

Article 2

PART 1

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF ANGUILLA CONCERNING AN ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND NORTHERN IRELAND AND THE GOVERNMENT OF ANGUILLA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Letter from UK Government

20th July 2009

Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Anguilla to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, I have the honour

- to propose to you the arrangements contained in the Arrangement between the Government of the United Kingdom and Northern Ireland and the Government of Anguilla for the exchange of information relating to taxes at Appendix 1 to this letter and that this will come into effect on the date mentioned in Paragraph 13 of the Arrangement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the arrangements and to notify each other without delay when such formalities are completed;

In proposing these arrangements, the intention of the Government of the United Kingdom and the Government of Anguilla is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as they are in force and effective. In the event that a party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that that other party may suspend the operation of the arrangements for as long as such measures apply.

For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one party to residents or citizens of either party on the basis that the other party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by

either party against, amongst others, members of the OECD generally.

I have the honour to confirm that, if the above is acceptable to the Government of Anguilla, this letter and Appendix I thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said arrangements.

Please accept, Sir, the assurance of our highest consideration.

Chris Bryant MP
Parliamentary Under Secretary of State, Foreign and Commonwealth Office

Letter of Reply from the Government of Anguilla

Sir,

I have the honour to acknowledge receipt of your letter dated 20th July 2009, which reads as follows:

“Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Anguilla to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes, I have the honour

- to propose to you the arrangements contained in the Arrangement between the Government of the United Kingdom and Northern Ireland and the Government of Anguilla for the exchange of information relating to taxes at Appendix I to this letter and that this will come into effect on the date mentioned in Paragraph 13 of the Arrangement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the arrangements and to notify each other without delay when such formalities are completed;

In proposing these arrangements, the intention of the Government of the United Kingdom and the Government of Anguilla is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as they are in force and effective. In the event that a party applies prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party, it is understood that that other party may suspend the operation of the arrangements for as long as such measures apply.

For these purposes, a prejudicial or restrictive measure based on harmful tax practices means a measure applied by one party to residents or citizens of either party on the basis that the other party does not engage in effective exchange of information or because it lacks transparency in the operation of its laws, regulations or administrative practices, or on the basis of no or nominal taxes and one of the preceding criteria. Without limiting the generality of the term "prejudicial or restrictive measures" it includes the denial of a deduction, credit or exemption, the imposition of a tax, charge or levy, or special reporting requirements. Such measures are not limited solely to taxation matters. However, they do not include any generally applicable measure, applied by either party against, amongst others, members of the OECD generally.

I have the honour to confirm that, if the above is acceptable to the Government of Anguilla, this letter and Appendix I thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said arrangements.

Please accept, Sir, the assurance of our highest consideration.”

I am able to confirm that the contents of your letter dated 20th July 2009 and Appendix 1 thereto are acceptable to the Government of Anguilla and together with this reply will constitute the mutual acceptance of our two Governments of the provisions of the proposed arrangements.

Please accept, Sir, the assurance of our highest consideration

The Honourable Osbourne Fleming
Chief Minister

20th July 2009

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The International Tax Enforcement (Anguilla) Order 2010 No. 2677

PART 2

ARRANGEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF ANGUILLA FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas the United Kingdom of Great Britain and Northern Ireland and Anguilla (“the Territories”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the United Kingdom of Great Britain and Northern Ireland and Anguilla (“the Territories”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

Whereas the Territories have long been active in international efforts in the fight against financial and other crimes, including the targeting of terrorist financing;

Whereas Anguilla on 5 March 2002 entered into a formal written commitment to the OECD's principles of transparency and exchange of information and subsequently have participated actively in the OECD Global Forum on Taxation;

Whereas the Territories wish to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes;

Now, therefore, the Territories have agreed to conclude the following Arrangement which contains commitments on the part of the Territories only:

PARAGRAPH 1 SCOPE OF ARRANGEMENT

The competent authorities of the Territories shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Territories concerning the taxes and the tax matters covered by this Arrangement, including information that is foreseeably relevant to the determination, assessment, verification, enforcement, recovery or collection of tax claims with respect to persons subject to such taxes, or the investigation or prosecution of tax matters in relation to such persons. Information shall be exchanged in accordance with the provisions of this Arrangement and shall be treated as confidential in the manner provided in Paragraph 8.

PARAGRAPH 2 JURISDICTION

To enable the appropriate implementation of this Arrangement, information shall be provided in accordance with this Arrangement by the competent authority of the requested party:

- (a) without regard to whether the person to whom the information relates is a resident,

national or citizen of a party, or whether the person by whom the information is held is a resident, national or citizen of a party; and

- (b) provided that the information is present within the territory, or in the possession or control of a person subject to the jurisdiction, of the requested party.

PARAGRAPH 3 TAXES COVERED

1. The taxes covered by this Arrangement are:

- (a) in the case of the United Kingdom,

- (i) the income tax;
- (ii) the corporation tax;
- (iii) the capital gains tax;
- (iv) the inheritance tax and
- (v) the value added tax;

and

- (b) in the case of Anguilla,

- (i) the property tax;
- (ii) the stamp duty;
- (iii) the accommodation tax;
- (iii) the vacation residential asset levy; and
- (iv) levies, duties, fines or exemptions relating to the importation, exportation, transshipment, transit, storage and circulation of goods, as well as to prohibitions, restrictions and other similar controls on the movement of controlled items across national boundaries.

2. (a) Subject to sub-paragraph (b) of this Paragraph, this Arrangement shall also apply to any identical or substantially similar taxes imposed by either Territory after the date of signature of this Arrangement in addition to, or in place of, any of the taxes listed in sub-paragraph 1.

(b) The competent authorities of the Territories shall notify each other of any relevant changes to the taxation and related information-gathering measures covered by this Arrangement.

3. The Territories may, by mutual agreement, add other taxes to the taxes covered by this Arrangement.

PARAGRAPH 4 DEFINITIONS

1. In this Arrangement-

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The International Tax Enforcement (Anguilla) Order 2010 No. 2677*

- (a) “Anguilla” means the territory of Anguilla;
- (b) “collective investment scheme” means any pooled investment scheme, fund or vehicle irrespective of legal form;
- (c) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
- (d) “competent authority” means in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative, and in the case of Anguilla, the Permanent Secretary in the Ministry of Finance or a person or authority designated by him in writing;
- (e) “criminal laws” means all criminal laws designated as such under domestic law irrespective of whether contained in the tax laws, the criminal code or other statutes;
- (f) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting Territory;
- (g) “information” means any fact, statement, document or record in whatever form;
- (h) “information-gathering measures” means judicial, regulatory or administrative laws and procedures enabling a Territory to obtain and provide the information requested;
- (i) “person” means an individual (“natural person”), a company, or any other body or group of persons;
- (j) “public collective investment scheme” means any collective investment scheme, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors,
- (k) “requested party” means the Territory which is requested to provide or has provided information in response to a request under this Arrangement;
- (l) “requesting party” means the Territory submitting a request for or having received information from the requested party under this Arrangement;
- (m) “tax” means any tax covered by this Arrangement
- (n) “Territory” means the United Kingdom of Great Britain and Northern Ireland or Anguilla as the context requires;
- (o) “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 seabed and sub-soil and their natural resources may be exercised.

2. As regards the application of this Arrangement at any time by a Territory, 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 Territory, any meaning under the applicable tax laws of that Territory prevailing over a meaning given to the term under other laws of that Territory.

PARAGRAPH 5

EXCHANGE OF INFORMATION UPON REQUEST

1. The competent authority of a requested party shall provide upon request in writing by the requesting party information for the purposes referred to in Paragraph 1. Such information shall be exchanged without regard to whether the conduct being investigated would constitute a crime under the laws of the requested party if it occurred in the territory of the requested party. If the information received by the competent authority of the requested party is not sufficient to enable it to comply with the request for information, it shall advise the competent authority of the requesting party of that fact and request such additional information as may be required to enable the effective processing of the request.

2. If the information in possession of the competent authority of the requested party is not sufficient to enable it to comply with the request for the information, the requested party shall use all relevant information-gathering measures to provide the requesting party with the information requested, notwithstanding that the requested party may not need such information for its own tax purposes.

3. If specifically requested by the competent authority of the requesting party, the competent authority of the requested party shall provide information under this Paragraph, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

4. Each Territory shall ensure that its competent authority, for the purposes of this Arrangement, has the authority to obtain and provide upon request:

- (a) information held by banks, other financial institutions, and any person, including nominees and trustees, acting in an agency or fiduciary capacity;
- (b) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations, "Anstalten" and other persons, including, within the constraints of Paragraph 2, ownership information on all such persons in an ownership chain; and in the case of trusts, information on settlors, trustees, beneficiaries and protectors; and in the case of foundations, information on founders, members of the foundation council and beneficiaries.

5. Notwithstanding the preceding sub-paragraphs, this Arrangement does not create an obligation on the Territories to obtain or provide:

- (i) ownership information with respect to publicly traded companies or public collective investment schemes unless such information can be obtained without giving rise to disproportionate difficulties;
- (ii) information which is older than a legally required time period for retaining that information in the jurisdiction of the requested party and where that information is in fact no longer kept.

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6. The competent authority of the requesting party shall provide the following information to the competent authority of the requested party when making a request for information under this Arrangement in order to demonstrate the foreseeable relevance of the information to the request:

- (a) the identity of the person under examination or investigation;
- (b) the period for which the information is requested;
- (c) the nature and type of the information requested, including a description of the specific information sought and the form in which the requesting party would prefer to receive the information;
- (d) the tax purposes for which the information is sought and the reasons for believing that the information requested is foreseeably relevant to the administration or enforcement of the domestic laws of the requesting party;
- (e) reasonable grounds for believing that the information requested is present in the territory of the requested party or is in the possession or control of a person subject to the jurisdiction of the requested party;
- (f) to the extent known, the name and address of any person believed to be in possession or control of the information requested;
- (g) a statement that the request is in conformity with this Arrangement and the laws and administrative practices of the requesting party, and that if the requested information were within the jurisdiction of the requesting party then the competent authority of the requesting party would be able to obtain the information under the laws of the requesting party or in the normal course of administrative practice;
- (h) a statement that the requesting territory has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

7. The competent authority of the requested party shall forward the requested information as promptly as possible to the competent authority of the requesting party. To ensure a prompt response, the competent authority of the requested party shall:

- (a) confirm the receipt of a request in writing to the competent authority of the requesting party and shall notify the competent authority of the requesting party of any deficiencies in the request within 60 days of receipt of the request; and
- (b) if the competent authority of the requested party has been unable to obtain and provide the information requested within 90 days of receipt of the request, including if obstacles are encountered in furnishing the information, or if the competent authority of the requested party refuses to provide the information, it shall immediately inform the competent authority of the requesting party to explain the reasons for its inability or the obstacles or its refusal.

PARAGRAPH 6

TAX EXAMINATIONS (OR INVESTIGATIONS) ABROAD

1. The requested party may, to the extent permitted under its domestic laws, following reasonable notice from the requesting party, allow representatives of the competent authority of the requesting party to enter the territory of the requested party in connection with a request to interview persons and examine records with the prior written consent of the persons concerned. The competent authority of the requesting party shall notify the competent authority of the requested party of the time and place of the intended meeting with the persons concerned.
2. At the request of the competent authority of the requesting party, the competent authority of the requested party may permit representatives of the competent authority of the requesting party to be present at the appropriate part of a tax examination in the territory of the requested party.
3. If the request referred to in sub-paragraph 2 is granted, the competent authority of the requested party conducting the examination shall, as soon as possible, notify the competent authority of the requesting party of the time and place of the examination, the authority or person authorised to carry out the examination and the procedures and conditions required by the requested party for the conduct of the examination. All decisions regarding the conduct of the examination shall be made by the requested party conducting the examination.

PARAGRAPH 7

POSSIBILITY OF DECLINING A REQUEST

1. The competent authority of the requested party may decline to assist:
 - (a) where the request is not made in conformity with this Arrangement;
 - (b) where the requesting party has not pursued all means available in its own territory to obtain the information, except where recourse to such means would give rise to disproportionate difficulty; or
 - (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.
2. This Arrangement shall not impose upon a Territory any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in Paragraph 5(4) shall not by reason of that fact alone constitute such a secret or process.
3. This Arrangement shall not impose on a Territory an obligation to provide information held that is subject to legal privilege.
4. A request for information shall not be refused on the ground that the tax liability giving rise to the request is disputed by the taxpayer.
5. The requested party shall not be required to obtain and provide information which, if the

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requested information was within the jurisdiction of the requesting party, the competent authority of the requesting party would not be able to obtain under its laws or in the normal course of administrative practice.

6. The requested party may decline a request for information if the information is requested by the requesting party to administer or enforce a provision of the tax law of the requesting party, or any requirement connected therewith, which discriminates against a national or citizen of the requested party as compared with a national or citizen of the requesting party in the same circumstances.

PARAGRAPH 8 CONFIDENTIALITY

1. All information provided and received by the competent authorities of the Territories shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Paragraph 1 and used by such persons or authorities only for such purposes, including the determination of any appeal or the oversight of the above. For these purposes, information may be disclosed in public court proceedings or in judicial proceedings.

2. The information may not be used for any purpose other than for the purposes stated in Paragraph 1 without the express written consent of the competent authority of the requested party.

3. The information may not be disclosed to any other person or entity or authority or any other jurisdiction without the express written consent of the competent authority of the requested Party.

PARAGRAPH 9 SAFEGUARDS

Nothing in this Arrangement shall affect the rights and safeguards secured to persons by the laws or administrative practice of the requested party. The rights and safeguards may not be applied by the requested party in a manner that unduly prevents or delays effective exchange of information.

PARAGRAPH 10 ADMINISTRATIVE COSTS

Incidence of costs incurred in providing assistance (including reasonable costs of third parties and external advisors in connection with litigation or otherwise) shall be agreed by the competent authorities of the Territories in accordance with a Memorandum of Understanding

PARAGRAPH 11 IMPLEMENTING LEGISLATION

The Territories shall (where they have not already done so) and, to the extent necessary, enact appropriate legislation to comply with, and give effect to, the provisions of this Arrangement.

PARAGRAPH 12

MUTUAL AGREEMENT PROCEDURE

1. Where difficulties or doubts arise between the Territories regarding the implementation or interpretation of this Arrangement, the respective competent authorities shall use their best efforts to resolve the matter by mutual agreement and, so far as may be applicable, shall have regard to the interpretations set forth in the commentary to the 2002 model agreement on exchange of information on tax matters published by the OECD.
2. In addition to the endeavours referred to in sub-paragraph 1, the competent authorities of the Territories may mutually determine the procedures to be used under Paragraphs 5 and 6.
3. The competent authorities of the Territories may communicate with each other directly for the purposes of this Arrangement.
4. The Territories may also agree on other forms of dispute resolution.

PARAGRAPH 13

ENTRY INTO FORCE

Each of the parties shall notify to the other the completion of the procedures required by its law for the bringing into force of this Arrangement. The Arrangement shall enter into force on the date of the later notification. The provisions of this Arrangement shall have effect:

- (a) with respect to criminal tax matters upon the entry into force of this Arrangement; and
- (b) with respect to all other matters covered in Paragraph 1 for taxable periods beginning on or after the date of entry into force of this Arrangement or, where there is no taxable period, for all charges to tax arising on or after the date on which this Arrangement enters into force.

PARAGRAPH 14

TERMINATION

1. This Arrangement shall remain in force until terminated by either Territory.
2. Either Territory may terminate this Arrangement by giving notice of termination in writing. Such termination shall become effective on the first day of the month following the expiration of a period of six months after the date of receipt of notice of termination by the other Territory.
3. If the Arrangement is terminated the Territories shall remain bound by the provisions of Paragraph 8 with respect to any information obtained under this Arrangement. All requests received up to the effective date of termination shall be dealt with in accordance with the provisions of this Arrangement.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains arrangements (“the Arrangements”) dealing with the exchange of information for tax purposes between the Government of the United Kingdom and the Government of Anguilla. This Order brings the Arrangements into effect.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the Arrangements.

The Arrangements provide for the exchange of information foreseeably relevant to the administration or enforcement of the taxes covered by the Arrangements by the revenue authorities of the two countries. Information will be exchanged in accordance with the provisions 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. They will take effect as follows:

- (a) in respect of requests relating to criminal tax matters on the date of entry into force; and
- (b) for all other requests, in relation to taxable periods beginning on or after the date of entry into force or, where there is no taxable period, for all charges to tax arising on or after that date.

The date of entry into force will, in due course, be published in the *London, Edinburgh and Belfast Gazettes*.

A full and final Impact Assessment has not been produced for this Order as a negligible impact on the private or voluntary sectors is foreseen.