Draft Order 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

2010 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

The Double Taxation Relief and International Tax Enforcement (Oman) Order 2010

Made - - - - 2010

At the Court at Buckingham Palace, the x day of y 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 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 a resolution of that House.

Accordingly, Her Majesty, in exercise of the powers conferred upon Her by section 2 of the Taxation (International and Other Provisions) Act 2010 and 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 Double Taxation Relief and International Tax Enforcement (Oman) Order 2010.

Double taxation and international tax enforcement arrangements to have effect

2. It is declared that—

(a) the arrangements specified in the Protocol set out in the Schedule to this Order, which vary the agreement set out in the Schedule to the Double Taxation Relief (Taxes on

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

Income) (Oman) Order 1998(**a**) have been made with the Government of the Sultanate of Oman;

(b) the arrangements have been made with a view to affording relief from double taxation in relation to income tax, corporation tax, capital gains tax and taxes of a similar character imposed by the laws of the Sultanate of Oman and for the purpose of assisting international tax enforcement; and

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

Name
Clerk of the Privy Council

(**a**) S.I. 1998/2568.

SCHEDULE

Article 2

PROTOCOL BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE SULTANATE OF OMAN TO AMEND THE AGREEMENT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL GAINS SIGNED ON 23RD FEBRUARY 1998

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Sultanate of Oman,

Desiring to conclude a Protocol to amend the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Sultanate of Oman for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital gains, signed at London on 23rd February 1998 (hereinafter referred to as "the Agreement"),

Have agreed as follows:

ARTICLE I

Sub-paragraph (a) of paragraph (3) of Article 2 of the Agreement shall be replaced by the following:

"(a) in the case of the Sultanate of Oman:

the income tax;

(hereinafter referred to as "Omani tax");"

ARTICLE II

(1) In sub-paragraph (e) of paragraph (1) of Article 3 of the Agreement, the words "commercial or industrial" shall be deleted.

(2) Clause (ii) of sub-paragraph (i) of paragraph (1) of Article 3 of the Agreement shall be replaced by the following:

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

ARTICLE III

Paragraph (5) of Article 8 of the Agreement shall be deleted.

ARTICLE IV

(1) Paragraph (2) of Article 10 of the Agreement shall be replaced by the following paragraphs, (2A) and (2B), as follows:

"(2A) However, such dividends 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:

(a) except as provided in sub-paragraph b), such dividends shall be exempt from tax in the Contracting State of which the company paying the dividends is a resident;

(b) where dividends are paid out of income (including gains) derived directly or indirectly from immovable property within the meaning of Article 6 by an investment company or investment fund which distributes most of this income annually and whose income from such immovable property is exempted from tax, the tax charged by the Contracting State of which the company paying the dividends is a resident shall not exceed 15 per cent of the gross amount of the dividends.

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

(2B) Notwithstanding the provisions of sub-paragraph (b) of paragraph (2A) of this Article, dividends paid by a company which is a resident of a Contracting State shall be exempt from tax in that State where they are paid to:

(a) in the case of the Sultanate of Oman:

(i) the Government of the Sultanate of Oman;

(ii) the Central Bank of Oman;

(iii) the State General Reserve Fund;

(iv) the Omani Investment Fund;

(v) any retirement or pension fund organised under Omani laws; and

(vi) any other statutory body or institution wholly or mainly owned by the Government of the Sultanate of Oman, as may be agreed from time to time between the competent authorities of the Contracting States;

(b) in the case of the United Kingdom:

(i) the Government of the United Kingdom;

(ii) the Bank of England;

(iii) any pension fund organised under United Kingdom law; and

(iv) any other statutory body or institution wholly or mainly owned by the Government of the United Kingdom, as may be agreed from time to time between the competent authorities of the Contracting States."

(2) In paragraph (4) of Article 10 of the Agreement, the words "paragraphs (1) and (2)" shall be replaced by the words "paragraphs (1) and (2A)".

ARTICLE V

Article 12 of the Agreement shall be replaced by the following:

"ARTICLE 12

Royalties

1. Royalties arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.
2. However, such royalties may also be taxed in the Contracting State in which they arise and according to the laws of that State, but if the beneficial owner of the royalties is a resident of the other Contracting State, the tax so charged shall not exceed 8 per cent of the gross amount of the royalties.

3. 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 computer software, cinematograph films, and films or tapes for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or for the use of, or the right to use industrial, commercial or scientific equipment, or for information (know-how) concerning industrial, commercial or scientific experience.

4. The provisions of paragraphs 1 and 2 of this Article 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, or performs in that other State independent personal services from a fixed base situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment or fixed base. In such case, the provisions of Article 7 or Article 14 of this Agreement, as the case may be, shall apply.

5. Royalties shall be deemed to arise in a Contracting State when the payer is a resident of that State. Where, however, the person paying the royalties, whether he is a resident of a Contracting State or not, has in a Contracting State a permanent establishment or a fixed base in connection with which the liability to pay the royalties was incurred, and such royalties are borne by such permanent establishment or fixed base, then such royalties shall be deemed to arise in the Contracting State in which the permanent establishment or fixed base is situated.

6. 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 of royalties. 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 Agreement.

7. The provisions of this Article shall not apply if it was the main purpose or one of the main purposes of any person concerned with the creation or assignment of the rights in respect of which the royalties are paid to take advantage of this Article by means of that creation or assignment."

ARTICLE VI

Paragraph (5) of Article 13 of the Agreement shall be deleted.

ARTICLE VII

In paragraph (3) of Article 25 of the Agreement, the words "paragraph (4) or (5) of Article 12" shall be replaced by the words "paragraph (6) or (7) of Article 12".

ARTICLE VIII

The following new article shall be inserted immediately after Article 27 of the Agreement:

"ARTICLE 27A

Assistance in the Collection of Taxes

1. The Contracting States agree to lend assistance to each other in the collection of taxes covered by and not levied contrary to this Agreement, together with interest, administrative penalties and the costs of collection pertaining to such taxes. The competent authorities of the Contracting States may by mutual agreement settle the mode of application of this Article.

2. If a Contracting State makes a request for assistance in the collection of taxes and dues mentioned in paragraph (1) of this Article, that request shall include a certification by the competent authority of that State that, under the laws of that State, it has the right to collect the taxes and dues and the taxpayer has no further right to prevent collection. That request shall thereupon be accepted for the purposes of collection of taxes by the competent authority of the other Contracting State.

3. The request of a Contracting State that has been accepted for collection by the other Contracting State shall be fulfilled by that other State as though such request related to its own tax claims. However, such claims do not enjoy any priority in the requested State and cannot be recovered by the imprisonment for debt of the debtor.

4. Amounts collected by the competent authority of a Contracting State pursuant to this Article shall be forwarded to the competent authority of the other Contracting State within two months of the date of recovery. Except where the competent authorities of the Contracting States otherwise agree, the ordinary costs of providing tax collection assistance shall be borne by the requested State.

5. Proceedings with respect to the existence, validity or the amount of taxes and dues certified by the competent authority of a Contracting State shall not be brought before the courts or administrative bodies of the other Contracting State.

6. Nothing in this Article shall be construed as imposing 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;

(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.

7. The provisions of this Article shall apply only to persons to whom the Agreement applies and in respect only of taxes covered by this Agreement."

ARTICLE IX

In Article 30 of the Agreement, the following sub-paragraph shall be inserted after sub-paragraph (b):

"(c) in both States, notwithstanding the provisions of subparagraphs (a) and (b) above, in respect of taxes withheld at source, for amounts paid on or after 1st January in the calendar year next following that in which the notice of such termination is given."

ARTICLE X

Each of the Contracting States shall notify to the other, through diplomatic channels, the completion of the procedures required by its law for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall have immediate effect except for taxes withheld at source, for which it shall have effect in respect of amounts paid on or after 1st January in the following calendar year.

In witness whereof, the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

Done in duplicate at London on this 26th day of November 2009 corresponding to the 9 day of Dhul-Hijja 1430 AH in the English and Arabic languages, both texts being equally authoritative.

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

Stephen Timms

For the Government of the Sultanate of Oman:

Ahmed Bin Abdulnabi Maki

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol ("the Protocol") which amends the agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Sultanate of Oman for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital Gains, which was scheduled to the Double Taxation Relief (Taxes on Income) (Oman) Order 1998 (S.I. 1998/2568) ("the 1998 Agreement"). This Order brings the amending Protocol into effect.

The 1998 Agreement aims to eliminate the double taxation of income or gains arising in one country and paid to residents of the other country. It does this 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. It also has specific measures which combat discriminatory tax treatment and provide for assistance in international tax enforcement.

The Protocol continues this approach. Article 10 of the 1998 Agreement is amended to provide for exemption from taxation of dividends in the circumstances set out in the amending provisions. Article 12 is replaced, and provides that royalties earned in the country of one treaty partner may be taxed in another. The newly inserted Article 27A provides rules under which the two countries may provide assistance to each other in the collection of their taxes. There are also other minor amendments to the 1998 Agreement.

Article 1 provides for citation.

Article 2 makes a declaration as to the effect and content of the arrangements set out in the Protocol.

The Protocol will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures. It shall have immediate effect, except for taxes withheld at source, for which it shall have effect in respect of amounts paid on or after January 1st next following the date of entry into force of the Protocol.

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

An Impact Assessment has not been produced for this instrument as it has a negligible impact on business, charities or voluntary bodies.

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