

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

DRAFT STATUTORY INSTRUMENTS

2010 No.

TAXES

**The Double Taxation Relief and International
Tax Enforcement (Malaysia) 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 5(2) of the Taxation (International and Other Provisions) Act 2010⁽¹⁾ and section 173(7) of the Finance Act 2006⁽²⁾ 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 (Malaysia) 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 arrangements set out in the Schedule to the Double Taxation Relief (Taxes on Income) (Malaysia) Order 1997⁽³⁾, have been made with the Government of Malaysia;

(1) 2010 c. 8.
(2) 2006 c. 25.
(3) S.I. 1997/2987.

- (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 Malaysia 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

SCHEDULE

Article 2

PROTOCOL AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF MALAYSIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME SIGNED AT KUALA LUMPUR ON 10TH DECEMBER 1996

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia;

Desiring to conclude a Protocol amending the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income, signed at Kuala Lumpur on 10th December 1996, (hereinafter referred to as “the Agreement”);

Have agreed as follows:

ARTICLE I

Paragraph (2) of Article 25 of the Agreement shall be deleted and replaced by the following:

“(2) The provisions of this Agreement, other than the provisions of Article 28, shall not apply to persons entitled to any special tax benefit under:

- (a) a law of either one of the Contracting States which has been identified in an Exchange of Notes between the Contracting States; or
- (b) any substantially similar law subsequently enacted.”

ARTICLE II

Article 28 of the Agreement shall be deleted and replaced by the following:

“ARTICLE 28

Exchange of information

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

(2) Any information received under paragraph (1) of this Article by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph (1) of this Article, or the oversight of the above. Such persons or authorities shall use the information only for such

purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy.

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

(5) In no case shall the provisions of paragraph (3) of this Article be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

ARTICLE III

(1) Each of the Contracting States shall notify the other, through diplomatic channels, of the completion of the procedures required by its law for the bringing into force of this Protocol. The Protocol shall enter into force on the date of the later of these notifications.

(2) The provisions of this Protocol shall have effect with regard to tax years beginning on or after 1 January of the calendar year next following the year of the entry into force of this Protocol.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at London on the 22nd day of September 2009 in the English and Bahasa Malaysia languages, both texts being equally authoritative. In the event of there being a dispute in the interpretation and the application of this Protocol, the English text shall prevail.

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

Stephen C. Timms

For the Government of Malaysia:

H.E. Datuk Abd. Aziz Mohammed

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains a Protocol (“the Protocol”) which amends an agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Malaysia for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (“the Agreement”), which was scheduled to the Double Taxation Relief (Taxes on Income) (Malaysia) Order 1997 (S.I. 1997/2987). This Order brings the Protocol into effect.

The Agreement aims to eliminate the double taxation of income 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 that approach by updating the exchange of information article in the Agreement to bring it into line with the new international standard for exchange of information as set out in the Model Tax Convention on Income and on Capital published by the Organisation for Economic Cooperation and Development (“OECD”) and to cover taxes of every kind and description imposed by the two countries.

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 later of the notifications by each country of the completion of its legislative procedures. It shall have effect for tax years beginning on or after 1st January of the calendar year next following the date of entry into force.

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.