

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

DRAFT STATUTORY INSTRUMENTS

2015 No.

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

The International Tax Enforcement (Brazil) Order 2015

Made - - - - [day] [month] 2015

At the Court at Buckingham Palace, the [date] day of [month] 2015

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 exercising the powers conferred upon Her by section 173(1) to (3) 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 (Brazil) Order 2015.

Tax information exchange agreement to have effect

2. It is declared that—

(1) 2006 c. 25.

- (a) the agreement set out in the Schedule to this Order has been made with the Government of the Federative Republic of Brazil with a view to the exchange of information foreseeably relevant to the administration or enforcement or recovery of the taxes, and debts relating to the taxes, covered by the agreement; and
- (b) it is expedient that the agreement should have effect.

Name
Clerk of the Privy Council

SCHEDULE

Article 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE FEDERATIVE REPUBLIC OF BRAZIL FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil, desiring to facilitate the exchange of information with respect to certain taxes have agreed as follows:

ARTICLE 1

Object and Scope of the Agreement

The competent authorities of the Contracting Parties shall provide assistance through exchange of information that may be relevant to the administration or enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that may be relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters, including criminal tax matters. Information shall be exchanged in accordance with the provisions of this Agreement and shall be treated as confidential in the manner provided in Article 9.

ARTICLE 2

Jurisdiction

1. A requested Party is not obliged to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction.
2. Information shall be exchanged in accordance with this Agreement by the competent authority of the requested Party without regard to whether the person to whom the information relates is a resident or national of a Contracting Party.

ARTICLE 3

Taxes Covered

1. The taxes which are the subject of this Agreement 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;
 - (v) the value added tax; and
 - (vi) excise duties.

- b) in the case of Brazil;
 - (i) the individual and the corporate income tax (IRPF and IRPJ, respectively, hereinafter referred to as the income tax);
 - (ii) the industrialized products tax (IPI);
 - (iii) the financial transactions tax (IOF);
 - (iv) the rural property tax (ITR);
 - (v) the contribution for the program of social integration (PIS);
 - (vi) the social contribution for the financing of social security (COFINS); and
 - (vii) the social contribution on net profits (CSLL).

2. This Agreement shall apply also to any identical or substantially similar taxes imposed after the date of signature of the Agreement in addition to or in place of the existing taxes if the Contracting Parties so agree. The competent authority of each Contracting Party shall notify the other of changes in laws which may affect the obligations of that Contracting Party pursuant to this Agreement.

3. This Agreement shall apply to taxes imposed by states, municipalities or other political subdivisions of a Contracting Party to the extent allowable under the laws of that Contracting Party.

ARTICLE 4

Definitions

- 1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term “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;
 - b) the term “Brazil” means the Federative Republic of Brazil;
 - c) the term “Contracting Party” means the United Kingdom or Brazil as the context requires;
 - d) the term “competent authority” means
 - i) in the case of the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - ii) in the case of Brazil, the Minister of Finance, the Secretary of Federal Revenue or their authorised representatives;
 - e) the term “person” includes an individual, a company and any other body of persons;
 - f) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - g) the term “publicly traded company” means any company whose principal class of shares is listed on a recognised stock exchange provided its listed shares can be readily purchased or sold by the public. Shares can be purchased or sold “by the public” if the

- purchase or sale of shares is not implicitly or explicitly restricted to a limited group of investors;
- h) the term “principal class of shares” means the class or classes of shares representing a majority of the voting power and value of the company;
 - i) the term “recognised stock exchange” means any stock exchange agreed upon by the competent authorities of the Contracting Parties;
 - j) the term “collective investment fund or scheme” means any pooled investment vehicle, irrespective of legal form. The term “public collective investment fund or scheme” means any collective investment fund provided the units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed by the public. Units, shares or other interests in the fund or scheme can be readily purchased, sold or redeemed “by the public” if the purchase, sale or redemption is not implicitly or explicitly restricted to a limited group of investors;
 - k) the term “tax” means any tax to which this Agreement applies;
 - l) the term “applicant Party” means the Contracting Party requesting information;
 - m) the term “requested Party” means the Contracting Party requested to provide information;
 - n) the term “information gathering measures” means laws and administrative or judicial procedures that enable a Contracting Party to obtain and provide the requested information;
 - o) the term “information” means any fact, statement or record in any form whatever;
 - p) the term “national” means
 - i) in relation to the United Kingdom, any British citizen, or any British subject not possessing the citizenship of any other Commonwealth country or territory, provided he has the right of abode in the United Kingdom; and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the United Kingdom; and
 - ii) in relation to Brazil, any individual possessing the Brazilian nationality and any legal entity or any other collective entity deriving its status as such from the laws in force in Brazil;
 - q) the term “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the applicant Party;
 - r) the term “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.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 11, have the meaning that it has at that time under the law of that Contracting Party for the purposes of the taxes to which this Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

ARTICLE 5

Exchange of Information Upon Request

1. The competent authority of the requested Party shall provide upon request information for

the purposes referred to in Article 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 such conduct occurred in the territory of the requested Party.

2. If the information in the possession of the competent authority of the requested Party is not sufficient to enable it to comply with the request for information, that Party shall use all relevant information gathering measures to provide the applicant 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 an applicant Party, the competent authority of the requested Party shall, to the extent allowable under its domestic laws, provide:

- a) information in the form of depositions of witnesses and authenticated copies of original records;
- b) information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity including nominees and trustees; and
- c) information regarding the legal and beneficial ownership of companies, partnerships, trusts, foundations and other persons, including, within the constraints of Article 2, ownership information on all such persons in an ownership chain; in the case of trusts, information on settlors, trustees and beneficiaries; and in the case of foundations, information on founders, members of the foundation council and beneficiaries, and equivalent information in the case of entities that are neither trusts nor foundations. Notwithstanding the preceding sentence, this Agreement does not create an obligation on the Contracting Parties to obtain or provide ownership information with respect to publicly traded companies or public collective investment funds or schemes unless such information can be obtained without giving rise to disproportionate difficulties.

4. The competent authority of the applicant Party shall provide the following information to the competent authority of the requested Party when making a request for information under the Agreement to demonstrate the foreseeable relevance of the information to the request:

- a) the identity of the person under examination or investigation;
- b) the period of time with respect to which the information is requested;
- c) a statement of the information sought including its nature and the form in which the applicant Party wishes to receive the information from the requested Party;
- d) the tax purpose for which the information is sought;
- e) 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 of the requested information;
- g) a statement that the request is in conformity with the law and administrative practices of the applicant Party, that if the requested information was within the jurisdiction of the applicant Party then the competent authority of the applicant Party would be able to obtain the information under the laws of the applicant Party or in the normal course of administrative practice and that it is in conformity with this Agreement;
- h) a statement that the applicant Party has pursued all means available in its own territory to obtain the information, except those that would give rise to disproportionate difficulties.

5. The competent authority of the requested Party shall acknowledge receipt of the request to the competent authority of the applicant Party, shall advise if there are any unexpected delays in obtaining the requested information, and shall use its best endeavours to forward the requested information to the applicant Party with the least possible delay.

ARTICLE 6

Spontaneous Exchange of Information

Without prejudice to Article 5, the competent authorities of the Contracting Parties may spontaneously exchange without request information which may be relevant to, and bears significantly on the accomplishment of, the purposes referred to in Article 1.

ARTICLE 7

Tax Examinations Abroad

1. The requested Party may allow, to the extent permitted under its domestic laws, representatives of the competent authority of the applicant Party to enter the territory of the requested Party to interview individuals and examine records with the written consent of the persons concerned. The competent authority of the applicant Party shall notify the competent authority of the requested Party of the time and place of the meeting with the individuals concerned.
2. At the request of the competent authority of the applicant Party, the competent authority of the requested Party may allow representatives of the competent authority of the applicant 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 paragraph 2 is acceded to, the competent authority of the requested Party shall, as soon as possible, notify the competent authority of the applicant Party about the time and place of the examination, the authority or official designated to carry out the examination and the procedures and conditions required by the requested Party for the conduct of the examination. All decisions with respect to the conduct of the tax examination shall be made by the requested Party.

ARTICLE 8

Possibility of Declining a Request

1. The requested Party shall not be required to obtain or provide information that the applicant Party would not be able to obtain under its own laws for purposes of the administration or enforcement of its own tax laws.
2. The competent authority of the requested Party may decline to assist where the request is not made in conformity with this Agreement.
3. This Agreement shall not impose on a requested Party any obligation to provide items subject to legal privilege, but this paragraph shall not prevent an attorney, solicitor or barrister from providing the name and address of a client where doing so would not constitute a breach of legal privilege.
4. This Agreement shall not impose on a requested Party the obligation to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Notwithstanding the foregoing, information of the type referred to in subparagraphs b) and c) of paragraph 3 of Article 5 shall not be treated as such a secret or trade process merely because it meets the criteria in that paragraph.

5. The requested Party may decline a request for information if the disclosure of the information would be contrary to public policy.
6. The requested Party may decline a request for information if the information is requested by the applicant Party to administer or enforce a provision of the tax law of the applicant Party, or any requirement connected therewith, which discriminates against a national of the requested Party as compared with a national of the applicant Party in the same circumstances.
7. A request for information shall not be refused on the ground that the tax claim giving rise to the request is disputed.
8. This Agreement shall not impose on a Contracting Party any obligation to carry out administrative measures at variance with its laws and administrative practices.

ARTICLE 9

Confidentiality

Any information received by a Contracting Party under this Agreement shall be treated as confidential and may be disclosed only to persons or authorities (including courts and administrative bodies) in the jurisdiction of the Contracting Party concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this Agreement or the oversight of the above. Such persons or authorities shall use such information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. The information shall 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.

ARTICLE 10

Costs

Unless the competent authorities of the Contracting Parties otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested Party and extraordinary costs incurred in providing assistance shall be borne by the applicant Party.

ARTICLE 11

Implementation Legislation

1. The competent authorities of the Contracting Parties shall adopt and implement procedures that are necessary to facilitate the implementation of this Agreement, including such additional forms for the exchange of information as shall promote the most effective use of the information.
2. Where difficulties or doubts arise between the Contracting Parties regarding the implementation or interpretation of this Agreement, the competent authorities shall endeavour to resolve the matter by mutual agreement.
3. The competent authorities of the Contracting Parties may communicate with each other directly for purposes of reaching agreement under this Article.

ARTICLE 12

Mutual Agreement Procedure

If both competent authorities of the Contracting Parties consider it appropriate to do so they may agree to exchange technical know-how, develop new audit techniques, identify new areas of non-

compliance and jointly study non-compliance areas.

ARTICLE 13

Entry into Force

Each of the Contracting Parties shall notify to the other through diplomatic channels the completion of the procedures required by its law for the bringing into force of this Agreement. This Agreement shall come into force on the date of the later of these notifications and shall thereupon have effect for all requests made on or after the date of entry into force, without regard to the taxable period to which the matter relates.

ARTICLE 14

Termination

1. Either Contracting Party may terminate the Agreement by serving a written notice of termination through diplomatic channels.
2. 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 Contracting Party.
3. Following termination of the Agreement the Contracting Parties shall remain bound by the provisions of Article 9 with respect to any information obtained under the Agreement.

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

DONE in duplicate at Brasilia this 28th day of September 2012 in the English and Portuguese languages, both texts being equally authoritative.

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

Lord Green

**For the Government of the Federative
Republic of Brazil:**

Carlos Alberto Freitas Barreto

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an agreement (“the Agreement”) dealing with the exchange of information for tax purposes between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Federative Republic of Brazil. This Order brings the Agreement into effect.

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The International Tax Enforcement (Brazil) Order 2015 No. 1887*

Article 1 provides for citation.

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

The Agreement provides for the exchange of information foreseeably relevant to the administration or enforcement of the taxes covered by the Agreement by the revenue authorities of the two countries. Information will be exchanged in accordance with the provisions of the Agreement.

The Agreement will enter into force on the date of the later of the notifications by each country of the completion of its legislative procedures.

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

A Tax Information and Impact Note has not been prepared for this Order as it gives effect to a previously announced policy to enact a tax information exchange agreement.