

Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2009 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

INHERITANCE TAX

VALUE ADDED TAX

**The Double Taxation Relief and International Tax Enforcement
(Virgin Islands) Order 2009**

Made - - - - *****

At the Court at Buckingham Palace, the ***** day of *****

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 788(10) of the Income and Corporation Taxes Act 1988(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 788(1) of the Income and Corporation Taxes Act 1988 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 (Virgin Islands) Order 2009.

(a) 1988 c. 1: Section 788 was extended by section 277 of the Taxation of Chargeable Gains Act 1992 (c. 12). It has also been amended. The relevant amendments are as follows: Subsection (1) was amended by section 88(1) of the Finance Act 2002 (c. 23). Subsection (10) was substituted by section 176 of the Finance Act 2006 (c. 25).

(b) 2006 c. 25.

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 Agreement set out in Part 2 of that Schedule have been made with the Government of the Virgin Islands 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 arrangements including, in particular, provisions about the prevention of fiscal evasion with respect to those taxes; and
- (b) it is expedient that those arrangements should have effect.

Double taxation arrangements to have effect

3. It is also 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 Agreement set out in Part 3 of that Schedule have been made with the Government of the Virgin Islands with a view to affording relief from double taxation in relation to United Kingdom income tax and taxes of a similar character imposed by the laws of either party; and
- (b) it is expedient that those arrangements should have effect.

Clerk of the Privy Council

PART 1

EXCHANGE OF LETTERS BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM AND THE GOVERNMENT OF THE VIRGIN ISLANDS CONCERNING AGREEMENTS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES AND THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

Sir,

Having regard to the wish of the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Virgin Islands to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and to make certain arrangements for the avoidance of double taxation of pensioners, government servants and students, and respecting the constitutional relationship between the United Kingdom and the Virgin Islands, I have the honour

to propose to you the arrangements contained in the Agreement for the exchange of information relating to taxes at Appendix 1 to this letter and the Agreement for the avoidance of double taxation with respect to taxes on income at Appendix 2 to this letter;

- to propose that the said Agreement at Appendix 1 will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose that the said Agreement at Appendix 2 will come into effect on the dates mentioned in Article 11 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the Agreements and to notify each other without delay when such formalities are completed;
- to confirm that the use of the term "Agreement" in the context of the instruments at Appendices 1 and 2 to this letter does not set a precedent for any future negotiations between the United Kingdom and the Virgin Islands, whatever the subject matter.

In proposing these Agreements, the intention of the Government of the United Kingdom and the Government of the Virgin Islands is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as the Agreements 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 either, or both, Agreements 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 the Virgin Islands, this letter and Appendices 1 and 2 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreements.

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

Gillian Merron

Under-Secretary of State, Foreign & Commonwealth Office

For the Government of the United Kingdom

Signed in London on 29th October 2008.

Madam,

I have the honour to acknowledge receipt of your letter dated 29th October 2008, 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 the Virgin Islands to enhance and facilitate the terms and conditions governing the exchange of information relating to taxes and to make certain arrangements for the avoidance of double taxation of pensioners, government servants and students, and respecting the constitutional relationship between the United Kingdom and the Virgin Islands, I have the honour

to propose to you the arrangements contained in the Agreement for the exchange of information relating to taxes at Appendix 1 to this letter and the Agreement for the avoidance of double taxation with respect to taxes on income at Appendix 2 to this letter;

- to propose that the said Agreement at Appendix 1 will come into effect on the date mentioned in Article 12 of the Agreement;
- to propose that the said Agreement at Appendix 2 will come into effect on the dates mentioned in Article 11 of the Agreement;
- to propose our mutual commitment to undertake at the earliest date any internal legislative formalities necessary for the coming into effect of the Agreements and to notify each other without delay when such formalities are completed;
- to confirm that the use of the term “Agreement” in the context of the instruments at Appendices 1 and 2 to this letter does not set a precedent for any future negotiations between the United Kingdom and the Virgin Islands, whatever the subject matter.

In proposing these Agreements, the intention of the Government of the United Kingdom and the Government of the Virgin Islands is not to apply prejudicial or restrictive measures based on harmful tax practices to residents or citizens of the other party so long as the Agreements 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 either, or both, Agreements 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 the Virgin Islands, this letter and Appendices 1 and 2 thereto together with your reply will constitute the mutual acceptance of the two Governments of the provisions of the said Agreements.

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

I am able to confirm that the contents of your letter dated 29th October 2008 and Appendices 1 and 2 thereto are acceptable to the Government of the Virgin Islands and together with this reply will constitute the mutual acceptance of our two Governments of the provisions of the said Agreements.

Please accept, Madam, the assurance of my highest consideration.

The Hon Ralph O'Neal OBE
Premier

For the Government of the Virgin Islands
Signed in London on 29th October 2008.

PART 2

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE VIRGIN ISLANDS FOR THE EXCHANGE OF INFORMATION RELATING TO TAXES

Whereas –

the United Kingdom and the Virgin Islands (“the parties”) recognise that present legislation already provides for cooperation and the exchange of information in criminal tax matters;

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

the Virgin Islands on the 2nd April 2002 entered into a formal written commitment to the OECD’s principles of transparency and exchange of information and have subsequently actively participated in the OECD Global Forum on Taxation;

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

Now, therefore, the parties have concluded the following Agreement which contains obligations on the part of the parties only.

ARTICLE 1

Scope of Agreement

The competent authorities of the parties shall provide assistance through exchange of information that is foreseeably relevant to the administration or enforcement of the domestic laws of the parties concerning the taxes and the tax matters covered by this Agreement, 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 Agreement and shall be treated as confidential in the manner provided in Article 8.

ARTICLE 2

Jurisdiction

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

- (a) without regard to whether the person to whom the information relates is a resident of a party, or whether the person by whom the information is held is a resident 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.

ARTICLE 3

Taxes Covered

(1) The taxes covered by 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; and
 - (v) the value added tax
- (b) in the case of the Virgin Islands,
- (i) the income tax;
 - (ii) the payroll tax; and
 - (iii) the land and house tax

(2) This Agreement shall also apply to any identical or substantially similar taxes imposed by either party after the date of signature of this Agreement in addition to, or in place of, any of the taxes listed in paragraph 1 of this Article. The competent authorities of the parties shall notify each other of any relevant changes to the taxation and related information gathering measures covered by this Agreement.

ARTICLE 4

Definitions

- (1) In this Agreement unless the context otherwise requires-
- (a) “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) “Virgin Islands” means the territory of the Virgin Islands;
 - (c) “citizen” means –
 - (i) in relation to the United Kingdom, any person who is a British citizen otherwise than by virtue of a connection with the Virgin Islands, or is a 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;
 - (ii) in relation to the Virgin Islands, any person who belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678) or has a certificate of residence of the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130); and any legal person, partnership, association or other entity deriving its status as such from the laws in force in the Virgin Islands;
 - (d) “collective investment scheme” means any pooled investment vehicle irrespective of legal form;
 - (e) “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
 - (f) “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 the Virgin Islands, the Financial Secretary or a person or authority designated by him in writing;
 - (g) “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 laws;
 - (h) “criminal tax matters” means tax matters involving intentional conduct which is liable to prosecution under the criminal laws of the requesting party;

- (i) “information” means any fact, statement, document or record in whatever form;
- (j) “information gathering measures” means laws, regulations and administrative or judicial procedures that enable a party to obtain and provide the requested information;
- (k) “party” means the United Kingdom or the Virgin Islands as the context requires;
- (l) “person” includes an individual (“natural person”), a company, or any other body or group of persons;
- (m) “public collective investment scheme” means any collective scheme or fund, in which the purchase, sale or redemption of shares or other interests is not implicitly or explicitly restricted to a limited group of investors;
- (n) “requested party” means the party to this Agreement which is requested to provide or has provided information in response to a request;
- (o) “requesting party” means the party to this Agreement submitting a request for or having received information from the requested party;
- (p) “tax” means any tax covered by this Agreement.

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

ARTICLE 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 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 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 Article, to the extent allowable under its domestic laws, in the form of depositions of witnesses and authenticated copies of original records.

(4) Each party shall ensure that its competent authority, for the purposes of this Agreement, 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 ownership of companies, partnerships and other persons, including, within the constraints of Article 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, and equivalent information in the case of entities that are neither trusts nor foundations.

(5) Notwithstanding the preceding paragraphs, this Agreement does not create an obligation on the parties to obtain or provide:

- (a) 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;
- (b) information relating to a period more than six years prior to the tax period under consideration;
- (c) information in the possession or control of a person other than the taxpayer that does not directly relate to the taxpayer.

(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 Agreement 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 evidence 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 why 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 declaration that the request is in conformity with this Agreement 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 party 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:

- (a) the competent authority of the requested party shall 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, or 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 in writing, explaining the reasons for its inability to obtain and provide the information, or the obstacles encountered, or for its refusal.

ARTICLE 6

Tax Examinations (or Investigations) Abroad

(1) The requested party may, to the extent permitted under its domestic laws, and 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 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, in accordance with its domestic laws, 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 paragraph 2 of this Article 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 in accordance with its domestic laws.

ARTICLE 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 Agreement; or
- (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 difficulties; or
- (c) where the disclosure of the information requested would be contrary to the public policy of the requested party.

(2) The provisions of this Agreement shall not impose upon a party any obligation to provide information which would disclose any trade, business, industrial, commercial or professional secret or trade process. Information described in paragraph 4 of Article 5 shall not by reason of that fact alone constitute such a secret or process.

- (a) The provisions of this Agreement shall not impose on a party the obligation to obtain or provide information which would reveal confidential communications between a client and an attorney, solicitor or barrister where such communications are:
 - (i) produced for the purposes of seeking or providing legal advice, or
 - (ii) produced for the purposes of use in existing or contemplated legal proceedings.
- (b) Information held with the intention of furthering an offence is not subject to legal privilege, and nothing in this Article shall 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.

(3) 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.

(4) The requested party shall not be required to obtain and provide information which, if the 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.

(5) 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 resident or citizen of the requested party as compared with a resident or citizen of the requesting party in the same circumstances.

ARTICLE 8

Confidentiality

(1) All information provided and received by the competent authorities of the parties shall be kept confidential and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the purposes specified in Article 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 disclosed to any other person or entity or authority without the express written consent of the competent authority of the requested party.

(3) Information provided to a requesting party shall not be disclosed to any other jurisdiction.

ARTICLE 9

Safeguards

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

ARTICLE 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 in a Memorandum of Understanding.

ARTICLE 11

Mutual Agreement Procedure

(1) Where difficulties or doubts arise between the parties regarding the implementation or interpretation of this Agreement, the competent authorities shall use their best efforts to resolve the matter by mutual agreement.

(2) In addition to the efforts referred to in paragraph 1 of this Article, the competent authorities of the parties may mutually determine the procedures to be used under Articles 5 and 6.

(3) The competent authorities of the parties may communicate with each other directly for the purposes of reaching agreement under this Article.

(4) The parties may also agree on other forms of dispute resolution.

ARTICLE 12

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 Agreement. The provisions of this Agreement shall have effect:

- (a) with respect to criminal tax matters upon the entry into force of this Agreement; and
- (b) with respect to all other matters covered in Article 1 for taxable periods beginning on or after the date of entry into force of this Agreement.

ARTICLE 13

Termination

- (1) This Agreement shall remain in force until terminated by either party.
- (2) Either party may terminate this Agreement by giving notice of termination in writing. Such terminations shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notice of termination by the other party.
- (3) If the Agreement is terminated the parties shall remain bound by the provisions of Article 8 with respect to any information obtained under this Agreement.

PART 3

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF THE VIRGIN ISLANDS FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME

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

Recognising that the two Governments have concluded an Agreement for the exchange of information relating to taxes; and

Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income;

Have agreed as follows:

ARTICLE 1

Persons covered

This Agreement shall apply to individuals who are residents of one or both of the parties.

ARTICLE 2

Taxes covered

The taxes to which this Agreement shall apply are the United Kingdom income tax and any taxes which are identical or substantially similar to it which are imposed by either party after the date of signature of this Agreement. In the case of the United Kingdom such taxes may be in addition to, or in place of, the income tax. The competent authorities of the parties shall notify each other of any significant changes that have been made in their taxation laws.

ARTICLE 3

General definitions

(1) For the purposes of this Agreement, unless the context otherwise requires:

- (a) “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 sea bed and subsoil and their natural resources may be exercised;
- (b) “the Virgin Islands” means the territory of the Virgin Islands;
- (c) “a party” and “the other party” mean the United Kingdom or the Virgin Islands, as the context requires;
- (d) “competent authority” means
 - (i) in the United Kingdom, the Commissioners for Her Majesty’s Revenue and Customs or their authorised representative;
 - (ii) in the Virgin Islands, the Financial Secretary or his or her authorised representative;

- (e) “tax” means any tax imposed by a party to which this Agreement applies and the terms “United Kingdom tax” and “Virgin Islands tax” should be construed accordingly.

(2) As regards the application of this Agreement at any time by a party, 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 party for the purposes of taxes to which this Agreement applies, any meaning under the applicable tax laws of that party prevailing over a meaning given to the term under other laws of that party.

ARTICLE 4

Resident

- (1) For the purposes of this Agreement, the term “resident of a party” means
- (a) in the case of the United Kingdom, any individual who, under its laws, is liable to tax therein by reason of his residence. This term, however, does not include any individual who is liable to tax in the United Kingdom in respect only of income or capital gains from sources therein;
 - (b) in the case of the Virgin Islands, any individual who, under its laws, is liable to tax therein by reason of his residence. This term, however, does not include any individual who is liable to tax in the Virgin Islands in respect only of income from sources therein;
- (2) Where, by reason of the provisions of paragraph 1, an individual is a resident of both parties, then he shall be treated for the purposes of this Agreement as a resident of the United Kingdom only.

ARTICLE 5

Pensions

- (1) Pensions and other similar remuneration paid to an individual who is a resident of a party, shall be taxable only in that party.
- (2) Notwithstanding the provisions of paragraph 1, such payments which arise in the United Kingdom may also be taxed in the United Kingdom where the recipient is not an individual who
- (a) belongs to the Virgin Islands by virtue of the Virgin Islands Constitution Order 2007 (Statutory Instrument 2007 No. 1678), or
 - (b) has a certificate of residence of the Virgin Islands by virtue of the Immigration and Passport Ordinance (Cap.130), provided that the individual has lived outside the United Kingdom for at least the preceding ten years.

ARTICLE 6

Government service

- (1) (a) Salaries, wages and other similar remuneration, other than pensions, paid by the Government of the Virgin Islands to an individual in respect of services rendered to that Government in the discharge of governmental functions shall be exempt from United Kingdom tax if the individual is not resident in the United Kingdom or is resident in the United Kingdom solely for the purposes of rendering those services;
- (b) Salaries, wages and other similar remuneration, other than pensions, paid by the Government of United Kingdom or by a political subdivision or a local authority to an individual in respect of services rendered to that Government or subdivision or authority in the discharge of governmental functions shall be exempt from Virgin Islands tax if the individual is not resident in the Virgin Islands or is resident in the Virgin Islands solely for the purposes of rendering those services.

(2) This Article does not apply to salaries, wages and other similar remuneration in respect of services rendered in connection with any trade or business carried on by a party or a political subdivision or a local authority thereof.

ARTICLE 7

Students

Payments received by a student or business apprentice who is, or was immediately before visiting a party, a resident of the other party, and who is temporarily present in the first-mentioned party for the purposes of his full-time education at a university, college or other recognised educational institution of a similar nature, or for his full-time training, shall not be taxed in that party, provided that such payments arise from sources outside that party and are for the purpose of his maintenance, education or training. The exemption from tax provided by this Article shall apply to a business apprentice only for a period of time not exceeding one year from the date he first arrives in the first-mentioned party.

ARTICLE 8

Elimination of double taxation

(1) Where a resident of a party derives income which, in accordance with the provisions of this Agreement, may be taxed in the other party, the first-mentioned party shall, subject to any provisions of its law regarding the allowance as a credit against its tax of tax payable in another territory (which shall not affect the general principle hereof), allow as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other party. Such deduction shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable to the income which may be taxed in that other party.

(2) For the purposes of this Article, income owned by a resident of a party which may be taxed in the other party in accordance with this Agreement shall be deemed to arise from sources in that other party.

ARTICLE 9

Mutual agreement procedure

(1) Where an individual considers that the actions of one or both of the parties result, or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those parties, present a case to the competent authority of the party of which he is a resident.

(2) The competent authority shall endeavour, if the case referred to in paragraph 1 appears to it to be justified, and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other party. Any agreement reached shall be implemented notwithstanding any time limits or other procedural limitations in the domestic law of the parties, except such limitations as apply for the purposes of giving effect to such an agreement.

(3) The competent authorities of the parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement.

(4) The competent authorities of the parties may communicate with each other directly for the purpose of reaching an agreement for the purposes of this Article.

ARTICLE 10

Exchange of information

(1) The competent authorities of the parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement.

(2) Any information received under paragraph 1 by a party shall be treated as secret in the same manner as information obtained under the domestic laws of that party 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 covered by this Agreement, 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.

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

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other party;
- (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 party;
- (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.

ARTICLE 11

Entry into force

Each of the parties shall notify the other of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications and shall, provided that the Agreement between the Government of the United Kingdom and the Government of the Virgin Islands for the Exchange of Information Relating to Taxes signed on 29th October 2008 is in force, thereupon have effect:

- (a) in the United Kingdom, for any year of assessment beginning on or after 6th April next following the date on which this Agreement enters into force;
- (b) in the Virgin Islands, on or after 1st January next following the date on which this Agreement enters into force.

ARTICLE 12

Termination

(1) This Agreement shall remain in force until terminated by one of the parties. The Governments of either party may on or before 30th June in any calendar year, give notice of termination to the Government of the other party and, in such event, this Agreement shall cease to have effect:

- (a) in the United Kingdom, for any year of assessment beginning on or after 6th April next following the date on which the notice is given;
- (b) in the Virgin Islands, for any year of assessment beginning on or after 1st January next following the date on which the notice is given.

(2) If this Agreement is terminated the parties shall remain bound by the provisions of Article 10 (Exchange of information) with respect to any information obtained under the Agreement.

EXPLANATORY NOTE

(This note is not part of the Order)

The Schedule to this Order contains an Exchange of Letters between the United Kingdom and the Virgin Islands concerning Agreements for the Exchange of Information Relating to Taxes and for the Avoidance of Double Taxation with respect to Taxes on Income. It also contains the text of those Agreements.

Article 2 provides that it is expedient that the arrangements specified in the Exchange of Letters in Part 1 of the Schedule to the Order and in the Agreement in Part 2 of the Schedule should have effect. These arrangements relate to the exchange of information relating to tax matters.

Article 3 provides that it is expedient that the arrangements specified in the Exchange of Letters in Part 1 of the Schedule to the Order and in the Agreement in Part 3 of the Schedule should have effect. These arrangements relate to the avoidance of double taxation with respect to taxes on income.

A detailed explanation of the Agreements can be found in the Explanatory Memorandum published with this Order and which may be accessed on the website of the Office of Public Sector Information at <http://www.opsi.gov.uk/stat.htm>

The Agreement for the Exchange of Information Relating to Taxes will enter into force on the date of the later of the notifications by each territory of the completion of its legislative procedures required to give effect to the Agreement and will have effect from that same date. However, in relation to matters other than criminal tax matters, the Agreement shall have effect only in relation to taxable periods beginning on or after the date of entry into force.

The Agreement for the Avoidance of Double Taxation with respect to Taxes on Income will also enter into force on the date of the later of the notifications by each territory of the completion of its legislative procedures. It will take effect in the United Kingdom for any year of assessment beginning on or after 6th April next following the date on which the Agreement enters into force; and in the Virgin Islands on or after 1st January next following the date on which the Agreement enters into force.

The date(s) 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 instrument as a negligible impact on the private or voluntary sectors is foreseen.

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Draft Order laid before the House of Commons under section 788(10) of the Income and Corporation Taxes Act 1988 and section 173(7) of the Finance Act 2006, for approval by resolution of that House.

DRAFT STATUTORY INSTRUMENTS

2009 No.

CAPITAL GAINS TAX

CORPORATION TAX

INCOME TAX

INHERITANCE TAX

VALUE ADDED TAX

**The Double Taxation Relief and International Tax Enforcement
(Virgin Islands) Order 2009**

£5.50